



## Health Services Platform Subscription Agreement

READ CAREFULLY THESE TERMS AND CONDITIONS, AS THEY, TOGETHER WITH THE MODJOUL ORDER FORM ON WHICH THEY ARE REFERENCED, CONSTITUTE A LEGALLY BINDING AGREEMENT AND GOVERN YOUR USE OF THE MODJOUL SOFTWARE. BY DOWNLOADING, INSTALLING AND/OR USING THE MODJOUL SOFTWARE YOU ARE INDICATING THAT YOU AGREE TO THESE TERMS AND CONDITIONS. IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT DOWNLOAD, INSTALL THE MODJOUL SOFTWARE.

The Modjoul Health Platform Subscription Agreement (the "Agreement") is entered into by and between Modjoul and the customer, identified in the order form that is purchasing a software subscription and is effective as of the date you download the Modjoul Software or sign the Order form, whichever comes first (the Effective Date). Modjoul and Customer are collectively referred to as the "Parties". If you are entering into this Agreement on behalf of a company or legal entity, you represent that you have the authority to bind such entity to these terms and conditions.

### *Terms and Conditions*

#### 1. DEFINITIONS

**"Acceptable Use Policy"** means the Modjoul policy described in Section 2.5.

**"Affiliate"** means any person, partnership, joint venture, corporation or other form of venture or enterprise, domestic or foreign, including subsidiaries, which directly or indirectly Control, are Controlled by, or are under common Control with a party. **"Control"** means the possession, directly or indirectly, of the power to direct or cause the direction of the management and operating policies of the entity in respect of which the determination is being made, through the ownership of more than fifty percent (50%) of its voting or equity securities, contract, voting trust or otherwise.

**"Confidential Information"** has the meaning ascribed to it in Section 6.

**"Customer Data"** means any data that Customer or its Users input into the Modjoul Platform for Processing as part of the Services, including any Personal Data forming part of such data.

**"Documentation"** means the software user and administrator manuals published by Modjoul regarding use of the Modjoul Platform, including additional, updated or revised documentation, if any.

**"Ergonomic Tool"** means the functionality in the Modjoul Platform that interacts with the Wearable to enable the tracking and collection of information about the User related to movement and safety.

**"Health Screening Tool"** means the functionality in the Modjoul Platform that enables tracking and collection of information about the User related to health and infection, including, without limitation, contact tracing, health screening and social distancing.

**"Intellectual Property Rights"** means all trade secrets, patents and patent applications, trademarks (whether registered or unregistered and including any goodwill acquired in such trademarks), service marks, trade names, copyrights, moral rights, database rights, design rights, rights in know-how, rights in Confidential Information, rights in inventions (whether patentable or not) and all other intellectual property and proprietary rights (whether registered or unregistered, any application for the foregoing, and all rights to enforce the foregoing), and all other equivalent or similar rights which may subsist anywhere in the world.

**“Modjoul App”** means the Modjoul mobile application software, and any third party software, documentation, interfaces, content, fonts and any data accompanying the Modjoul mobile application software. The Modjoul App is available for download by individual end-users and is used to communicate collected by the Wearable.

**“Modjoul Platform”** means the computer software applications, tools, application programming interfaces (APIs), connectors, programs, networks and equipment that Modjoul uses to make the Subscription Services available to its customers.

**“Personal Data”** means any information relating to an identified or identifiable natural person.

**“Process”** or **“Processing”** means any operation or set of operations which is performed on Customer Data or on sets of Customer Data, whether or not by automated means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.

**“Sales Order”** means any mutually agreed, written sales order, executed on behalf of Modjoul and Customer, describing the Subscription Services, Support, Wearable purchases, fees, and any special terms for using the Subscription Services that Customer has ordered (including, without limitation, Customer’s election to include the Ergonomic Tool and/or the Health Screening Tool. Each Sales Order becomes effective when executed by both Modjoul and Customer, and is made part of this Agreement as described in Section 2.2.

**“Sales Order Term”** means the Term of each Sales Order as set forth in such Sales Order.

**“Service Level Agreement”** has the meaning ascribed to it in [Exhibit A](#).

**“Subscription Services”** means the Modjoul Platform service offerings to which Customer subscribes, together with the applicable Support Program, each as specified in the applicable Sales Order, and the Documentation.

**“Support”** means the Modjoul support and maintenance services program specified in the applicable Sales Order. Terms governing the Support Program are specified in [Exhibit A](#) attached hereto.

**“Term”** has the meaning ascribed to it in Section 5.1.

**“User”** means any means any individual who has been authorized by Customer to use the end user features and functionality of the Modjoul Platform as part of its obtaining access to and use of Customer Applications.

**“Wearable”** the device equipped with sensors that capture certain data to be sent up to the Modjoul Platform for use by individuals to capture and track certain health related information.

## 2. SERVICES

**2.1. License to Subscription Services.** By paying the fees set forth in each Sales Order, and subject to compliance with the terms and conditions set forth in this Agreement, Modjoul grants to Customer a non-exclusive, non-transferable (except in accordance with Section 10.3 (Assignment)), royalty-free, worldwide license, without right to sub-license, for the Term to access and use, and permit its Users to access and use the Subscription Services for the Term (defined below). Modjoul will provide the Subscription Services in accordance with this Agreement, the Documentation and the Service Level Agreement (“SLA”) set forth in [Exhibit A](#). Modjoul may make changes to the Subscription Services from time to time by providing notice to Customer of such changes (including by e-mail, by a general posting on the Subscription Services site) provided that no changes materially diminish Customer’s use of the Subscription Services. If a User chooses to download the Modjoul App, the User will be required to accept the license terms accompanying the Modjoul App.

**2.2. License to Customer Data; Feedback.** Customer hereby grants to Modjoul a non-exclusive, non-transferable (except in accordance with Section 10.3 (Assignment)), royalty-free license, without right to sub-license (except to its sub-processors, as required for the provision of the Subscription Services), to use the Customer Data, solely as necessary to perform the Subscription Services and as otherwise may be agreed in writing by Customer. Modjoul shall have a royalty-free, worldwide, perpetual license to use or incorporate into the Subscription Services any

suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by Customer relating to the Products or Service.

**2.3. Performance Analytics; Aggregated Data.** Modjoul may use Customer's and its Users' Subscription Services usage history, statistics (including, with respect to the Ergonomics tool, statistics and metrics related to User activity) and telemetry ("**Analytics Data**") for Modjoul's internal analytical purposes related to its provision of the Subscription Services, including to (i) detect security incidents, and protect against malicious, deceptive, fraudulent, or illegal activity; (ii) to identify errors that impair existing functionality; and (iii) undertake internal research for technological development. Modjoul may make information derived from its analysis of Analytics Data publicly and or to third parties available on an aggregated and anonymized basis, provided that such information does not contain any Personal Data of Customer's Users or identify either Customer or any of its Users. For the sake of clarity, such aggregated and anonymized data is not Confidential Information of Customer.

**2.4. Customer Responsibilities.** Customer will designate one or more of its employees to be the point of contact with Modjoul for the management and support of the Subscription Services, and who will be responsible for establishing and managing Customer's use of the Subscription Services ("**Account**"), including the creation of authentication credentials to access Customer's Account. Customer is solely responsible for maintaining the status of its User base. Customer will safeguard all User authentication credentials in its possession or under its control. Customer is responsible for all activities that occur under the Account (except to the extent resulting from any breach or non-conformance by Modjoul of its obligations under this Agreement)

**2.5. Restrictions.** Customer shall not (and shall not allow Users or any third party to) (i) decompile, disassemble, or otherwise reverse engineer or attempt to reconstruct or discover any source code, underlying ideas, algorithms, file formats or programming or interoperability interfaces of the Subscription Services, (ii) remove any product identification, copyright or other notices displayed on the Subscription Services, (iii) assign, transfer, provide, lease, lend, use for timesharing, service bureau or hosting purposes or otherwise permit any third party (other than Customer employees and agents) to use the Subscription Services, or (iv) use the output or other information generated by the Subscription Services for any purpose other than as contemplated by this Agreement. Users are required as a condition of using the Services to review and accept the Modjoul Acceptable Use Policy (the "AUP"), a copy of which can be found at [\[INSERT LINK\]](#). The number of permitted Users is set forth in the applicable Sales Order.

#### **2.6. Intellectual Property Rights.**

2.6.1. As between Customer and Modjoul, Modjoul and Modjoul's licensors retain and own all right, title and interest and all Intellectual Property Rights in and to the Subscription Services and Modjoul's Confidential Information, and all enhancements or improvements to, or derivative works of any of the foregoing created or developed by or on behalf of Modjoul (collectively, "Modjoul Intellectual Property"). Nothing in this Agreement transfers or conveys to Customer any ownership interest in or to the Modjoul Intellectual Property.

2.6.2. Customer retains all of its rights, title and interest and Intellectual Property Rights in and to the Customer Data and Customer Confidential Information. No ownership interest in the Customer Data or Customer Confidential Information is transferred or conveyed to Modjoul by virtue of this Agreement. Modjoul will use Customer Data and Customer Confidential Information only for purposes of providing the Subscription Services, unless otherwise authorized in writing by Customer.

**2.7. Backup and Restore.** Unless specified in a Sales Order, Modjoul is not responsible for the backup of any Customer Data or other data and disclaims any and all responsibility for any loss of Customer Data or any other data from the Subscription Service. Modjoul deletes all Customer Data from the Subscription Services every 60 days. Customer acknowledges that data conversion, processing, and manipulation are subject to the likelihood of human and machine errors, omissions, delays, and losses, including inadvertent loss of data or damage to media that may give rise to loss or damage. To the extent within its control, Customer is responsible for adopting reasonable

measures to limit the effect of such problems, including (a) backing up data that is generated or stored through the Subscription Service and adopting procedures to ensure the accuracy of input data; (b) examining and confirming results prior to use; and (c) adopting procedures to identify and correct errors and omissions, replace lost or damaged media, and reconstruct data. In the event of termination or expiration of this Agreement or disconnection of the Subscription Service, Modjoul will delete any files, programs, data or messages associated with Customer's account.

### 3. FEES AND PAYMENT

3.1. **Fees; Invoicing.** Customer will pay Modjoul the fees for the Subscription Services as specified in the applicable Sales Order ("**Fees**"). Modjoul invoices in advance for use of the Subscription Services. Unless specified otherwise in the applicable Sales Order, Customer will make all payments within thirty (30) days of receipt of Modjoul's invoice. Unless otherwise specified in the applicable Sales Order, all Fees are stated and payable in US dollars. Unpaid amounts are subject to a finance charge of 1.5% per month on any outstanding balance, or the maximum amount permitted by law, whichever is lower.

3.2. **Sales Taxes, Etc.** Customer will be responsible for any applicable sales, value-added, use and similar taxes, together with all customs and import duties, and similar levies and impositions ("**Taxes**") payable with respect to its acquisition of Services, or otherwise arising out of or in connection with this Agreement, other than taxes based upon Modjoul's employees, personal property ownership or net income. Unless expressly specified otherwise in any Sales Order, all fees, rates and estimates exclude Taxes. If Customer has tax-exempt status, Customer will provide written evidence of such status with its purchase orders or upon request by Modjoul.

3.3. **Withholding.** If Customer is located outside the U.S.A., and is required to withhold taxes imposed upon Modjoul for any payment under this Agreement by virtue of the statutes, laws, codes or governmental regulations of a country in which any Subscription Services are delivered or obtained, then such payments will be made by Customer on behalf of Modjoul by deducting them from the payment then due Modjoul and remitting such taxes to the proper authorities on a timely basis, and the payments provided for under this Agreement will be adjusted upwards appropriately so that Modjoul actually receives the full amount of the fees set forth in the applicable Sales Order. Customer will provide Modjoul with official documentation or tax receipts on such withholdings supporting such taxes and such payments as may be required by Modjoul for its tax records as soon as reasonably possible following payment to the applicable tax authority, and in any event no later than when required by applicable law.

### 4. WARRANTIES

4.1. **Warranties.** Modjoul warrants to Customer that:

4.1.1. *Performance Warranty.* During the Subscription Term, the Modjoul Platform, in the form provided by Modjoul, will conform in all material respects to its applicable specifications set forth in the Documentation.

4.1.2. *Viruses.* Modjoul will use commercially reasonable efforts, using applicable current industry practices, to ensure that the Modjoul Platform, in the form provided by Modjoul to Customer under this Agreement, contains no computer virus, Trojan horse, worm or other similar malicious code.

4.1.3. *Support.* Modjoul will provide the Support in a good, professional and workmanlike manner, consistent with applicable industry standards.

4.1.4. *Infringement.* Modjoul's provision to Customer of the Subscription Services does not infringe any third party patent existing under the laws of the United States, Canada, any member state of the European Economic Area, the United Kingdom, Australia, New Zealand, Singapore, Brazil, South Korea, India or Japan, or infringe any third party copyright, trademark or service mark, or result from misappropriation by Modjoul of any third party's trade secrets (collectively, an "**Modjoul Infringement**").

4.1.5. *Compliance with Law.* The Subscription Services, in the form provided or made available by Modjoul, will comply with all laws applicable to Modjoul and its provision of the Subscription Services.

4.2. **Performance Remedy.** If the Modjoul Platform fails to conform to the warranty set forth in Section 4.1.1 and Customer provides written notice of the non-conformance to Modjoul within the applicable Order Term then, as Customer's exclusive remedy and Modjoul's sole obligation: Modjoul will either repair or, at its option, replace the non-conforming Modjoul Platform or, if Modjoul is unable to correct the non-conformance within 30 days of receipt of such written notice from Customer, Customer may terminate the applicable Subscription Services, and Modjoul will refund to Customer a pro-rata amount of any Subscription Services fees prepaid to Modjoul and applicable to the unutilized portion of the Subscription Term for the terminated Subscription Services.

4.3. **Infringement Remedy.** Customer's sole and exclusive remedy for any non-conformance with the warranty in Section 4.1.4 above will be Customer's defense and indemnification rights under Section 8.1 below, and Customer's termination rights under Section 5.2 below.

4.4. **Bugs and Abatement; Scope.** Without limiting the express warranties in this Section 4, Modjoul does not warrant that the Modjoul Platform or Services are completely free from all bugs, errors, or omissions, or will ensure complete security. The warranties in this Agreement are for the sole benefit of Customer, and may not be extended to any other person or entity.

4.5. **Disclaimer Of Implied Warranties.** Neither party makes any representation or warranty in connection with the Services, except as expressly warranted in this Agreement or the Additional Terms of Service. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT AS SPECIFICALLY WARRANTED IN THIS SECTION 4, EACH PARTY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ANY IMPLIED WARRANTY OF NON-INFRINGEMENT OR IMPLIED OBLIGATION TO INDEMNIFY FOR INFRINGEMENT, ANY IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR USAGE OF TRADE, AND ANY STATUTORY REMEDY. **CAUTION** – CUSTOMER FURTHER ACKNOWLEDGES THAT THE SUBSCRIPTION SERVICES SHOULD NOT BE RELIED UPON AS A SUBSTITUTE FOR QUALIFIED MEDICAL ADVICE.

## 5. TERM AND TERMINATION

5.1. **Term.** This Agreement commences on the Effective Date and will continue in effect until expiration or termination of any/all Sales Orders submitted hereunder ("**Term**") unless earlier terminated in accordance with this Agreement.

5.2. **Termination.** In the event of a material breach of the Agreement by either party, the non-breaching party may terminate the Agreement or any Sales Order affected by the breach by giving the breaching party written notice of the breach and the non-breaching party's intention to terminate. If the breach has not been cured within the period ending 30 days after such notice, and if the non-breaching party provides written notice of termination to the breaching party ("**Termination Notice**"), then this Agreement or any such Sales Order will terminate within the time period specified in the Termination Notice. Notwithstanding the foregoing, Customer's failure to pay any overdue fees and expenses within 30 days of Modjoul notifying Customer of the overdue payment will constitute a material breach of this Agreement. If Customer has not cured a material breach within the applicable cure period, then Modjoul may, on not less than 5 business days' prior written notice to Customer, in its sole discretion, and without prejudice to its other rights following material breach and failure to cure, until such breach has been cured in full, suspend performance of some or all of Modjoul's obligations to provide Services under this Agreement. If Customer terminates this Agreement or any Sales Order for breach in accordance with this Section 5.2, then Modjoul will refund to Customer a pro-rata amount of any affected Subscription Services fees prepaid to Modjoul and applicable to the unutilized portion of the Sales Order Term for terminated Subscription Services.

5.3. **Suspension – Critical Threats; Non-payment.** If Modjoul, acting reasonably in the circumstances then known to Modjoul, determines that Customer's or any of its Users' use of the Subscription Services poses an

imminent threat to (i) the security or integrity of any Customer Data or the data of any other Modjoul customer, or (ii) the availability of the Modjoul Platform to Customer or any other Modjoul customer (collectively, a “**Critical Threat**”), then Modjoul will immediately attempt to contact Customer to resolve the Critical Threat. If Modjoul is unable to immediately contact Customer, or if Modjoul contacts Customer but Customer is unable to immediately remediate the Critical Threat, then Modjoul may suspend Customer’s and its Users’ use of the Modjoul Platform until the Critical Threat is resolved and Modjoul is able to restore the Subscription Services for Customer. Modjoul may also suspend Customer’s and its Users’ use of the Modjoul Platform if Customer is ten (10) or more days past due on payment of undisputed amounts.

**5.4. Post Termination Obligations.** Following any termination of the Agreement or any Sales Order, each party will, within 30 days of such termination, (i) immediately cease use of any Confidential Information of the other communicated for the purposes of this Agreement or such Sales Order, and (ii) return or destroy (and certify destruction of) all copies of any Confidential Information of the other party disclosed under the Agreement or such Sales Order within 30 days of such termination, subject to each party’s customary backup and archival processes. The provisions of Sections 2.2 (License to Customer Data; Feedback), 2.3 (Performance Analytics; Aggregated Data), 2.6 (Intellectual Property Rights), 3 (Fees and Payment), 4.5 (Disclaimer Of Implied Warranties), 5.4 (Post Termination Obligations), 6 (Confidential Information), 7 (Data Handling), 8 (Indemnification), 9 (Limitation of Liability) and 10 (General) of this Agreement will survive any termination or expiration of this Agreement.

## 6. CONFIDENTIAL INFORMATION

**6.1. Restrictions on use and Disclosure.** Neither Modjoul nor Customer will disclose to any third party any information provided by the other party pursuant to or in connection with this Agreement that the disclosing party identifies as being proprietary or confidential or that, by the nature of the circumstances surrounding the disclosure, ought in good faith to be treated as proprietary or confidential (such information, “**Confidential Information**”), and will make no use of such Confidential Information, except under and in accordance with this Agreement. The receiving party will take reasonable precautions (using no less than a reasonable standard of care) to protect the disclosing party’s Confidential Information from unauthorized access or use. Each party may disclose Confidential Information to its Affiliates and service providers, and its Affiliates and service providers may use such information, in each case solely for purposes of this Agreement. Each party will be liable for any breach of its obligations under this Section 6 that is caused by an act, error or omission of any such Affiliate or service provider. Confidential Information includes information disclosed by the disclosing party with permission from a third party, and combinations of or with publicly known information where the nature of the combination is not publicly known. Modjoul’s Confidential Information includes information regarding Modjoul Platform, Modjoul’s processes, methods, techniques and know-how relating to identity management, user authentication or user authorization, Documentation, road-maps, pricing, marketing and business plans, financial information, information security information, certifications, and Personal Data of Modjoul personnel. Customer’s Confidential Information includes its proprietary workflows and processes, systems architecture, marketing and business plans, financial information, information security information, information pertaining to Customer’s other suppliers, and Personal Data of Customer’s Users. This Section 6 does not apply to Modjoul’s obligations regarding use and protection of Customer Data; those obligations are specified in Section 7 (Data Protection).

**6.2. Exclusions.** Except with respect to Personal Data, Confidential Information does not include information that the receiving party can establish: (i) has entered the public domain without the receiving party’s breach of any obligation owed to the disclosing party; (ii) has been rightfully received by the receiving party from a third party without confidentiality restrictions; (iii) is known to the receiving party without any restriction as to use or disclosure prior to first receipt by the receiving party from the disclosing party; or (iv) has been independently developed by the receiving party without use of or reference to the disclosing party’s Confidential Information.

**6.3. Disclosure Required By Law.** If any applicable law, regulation or judicial or administrative order requires the receiving party to disclose any of the disclosing party’s Confidential Information (a “**Disclosure Order**”) then, unless otherwise required by the Disclosure Order, the receiving party will promptly notify the disclosing party in writing prior to making any such disclosure, in order to facilitate the disclosing party’s efforts to protect its

Confidential Information. Following such notification, the receiving party will cooperate with the disclosing party, at the disclosing party's reasonable expense, in seeking and obtaining protection for the disclosing party's Confidential Information.

**6.4. Independent Development.** The terms of confidentiality under this Agreement will not limit either party's right to independently develop or acquire products, software or services without use of or reference to the other party's Confidential Information.

## 7. DATA HANDLING

### 7.1. **Regulatory Issues.**

7.1.1. *Personal Data – Compliance with Applicable Law.* Customer and the Users may select the Personal Data it/they elects to input into and Process using the Modjoul Platform in its/Users' sole discretion. Subject to the Customer Consent Obligation (defined in Section 7.1.2 below), Modjoul will comply, and will ensure that its personnel comply, with the requirements of state, federal and national privacy laws and regulations governing Customer Personal Data in Modjoul's possession or under its control and applicable to Modjoul's provision of Subscription Services. Customer is solely responsible for ensuring that it complies with any legal, regulatory or similar restrictions applicable to the types of data Customer elects to Process with the Modjoul Platform.

7.1.2. *Data Consents.* Customer is solely responsible for obtaining, and represents and warrants that it has obtained or will obtain prior to Processing by Modjoul, all necessary consents, licenses and approvals for the Processing, or otherwise has a valid legal basis under EU Data Protection Laws for the Processing of, any Personal Data provided by Customer or its Users as part of the Subscription Services (the "**Customer Consent Obligation**").

7.1.3. *Regulator Inquiries and Court Orders.* If any regulator, or any subpoena, warrant or other court or administrative order, requires Modjoul to disclose or provide Customer Data to a regulator or to any third party, or to respond to inquiries concerning the Processing of Customer Data, Modjoul will promptly notify Customer, unless prohibited by applicable law. Following such notification, Modjoul will reasonably cooperate with Customer in its response, except to the extent otherwise required by applicable law.

7.1.4. *HIPAA.* In addition to Customer's other obligations set forth herein, Customer specifically acknowledges and agrees that: (a) Modjoul is not acting on Customer's behalf as a Business Associate or subcontractor (as such terms are used, defined, or described in the Health Insurance Portability and Accountability Act of 1996, as amended and supplemented ("HIPAA")); (b) the Subscription Services are not HIPAA-compliant; and (c) Customer may not use the Subscription Services in any manner that would require Modjoul or the Subscription Services to be HIPAA-compliant.

**7.2. Customer Instructions.** Modjoul will Process Customer Data only as necessary to provide the Subscription Services, and in accordance with Customer's written instructions. This Agreement, and Customer's use of the Modjoul Platform's features and functionality, are Customer's instructions to Modjoul in relation to the Processing of Customer Data.

7.2.1. *Restrictions.* The restrictions in this Section 7.2.1 apply for purposes of Customer Data that is (a) Personal Data, and (b) subject to the California Consumer Privacy Act of 2018, as amended from time to time.

a) Modjoul will not retain, use, or disclose Personal Data for any purpose other than as required for the specific purpose of performing the Subscription Services and for the business purposes described in Section 2.3 (Performance Analytics; Aggregated Data);

b) Modjoul will not sell Personal Data to any third party. For these purposes, "Sell" means selling, renting, releasing, disclosing, disseminating, making available, transferring, or otherwise communicating orally, in

writing, or by electronic or other means any Personal Data to any third party for monetary or other valuable consideration.

c) For clarity, the restrictions in this Section 7.2.1 include retention, use or disclosure of Personal Data by Modjoul outside of the direct business relationship between Modjoul and Customer.

d) Modjoul certifies that it understands the restrictions in this Section 7.2.1 and will comply with them.

**7.3. Security Measures.** Modjoul will implement and maintain commercially reasonable technical and organizational security measures designed to meet the following objectives: (i) ensure the security and confidentiality of Customer Data in the custody and under the control of Modjoul; (ii) protect against any anticipated threats or hazards to the security or integrity of such Customer Data; (iii) protect against unauthorized access to or use of such Customer Data; and (iv) ensure that Modjoul's return or disposal of such Customer Data is performed in a manner consistent with Modjoul's obligations under items (i)-(iii) above.

**7.4. Audits and Security Assessments.** The Subscription Services are hosted in and offered from AWS. Information on AWS security posture, standards and certifications can be found at <https://aws.amazon.com/products/security/>.

**7.5. Sub-Processors.** Customer consents to Modjoul's use of sub-processors to provide aspects of the Subscription Services, and to Modjoul's disclosure and provision of Customer Data to those sub-processors. Modjoul publishes a list of its then-current sub-processors at <https://Modjoul.com/legal> ("**Sub-Processor List**"). Modjoul will require its sub-processors to comply with terms that are substantially no less protective of Customer Data than those imposed on Modjoul in this Agreement (to the extent applicable to the services provided by the sub-processor). Modjoul will be liable for any breach of its obligations under this Agreement that is caused by an act, error or omission of a sub-processor. Modjoul may authorize new sub-processors by provision of not less than 30 days' prior written notice to Customer, and by updating the Sub-Processor List. If Customer objects to the authorization of any future sub-processor on reasonable data protection grounds within 30 days of notification of the proposed authorization, and if Modjoul is unable to provide an alternative or workaround to avoid Processing of Customer Data by the objected to sub-processor within a reasonable period of time, not to exceed 30 days from receipt of the objection, then, at any time within 30 days of expiration of such 30 days period, Customer may elect to terminate the affected Sales Order(s) without penalty, by notice to Modjoul to that effect. If Customer terminates a Sales Order in accordance with the foregoing, then Modjoul will refund to Customer a pro-rata amount of any affected Subscription Services fees prepaid to Modjoul and applicable to the unutilized portion of the Subscription Term for terminated Subscription Services.

**7.6. Access by Modjoul Personnel.** Modjoul will ensure that its personnel access Personal Data only when authorized by Modjoul, and in accordance with Modjoul's applicable controls. Access is typically required only in connection with Modjoul's provision of the Support, and then only when necessary to resolve an issue. Modjoul will ensure that its personnel are subject to obligations of confidentiality with respect to Customer Data. Modjoul will not permit its personnel to access Customer Data unless they have passed a criminal and employment background check.

**7.7. User Requests.** If any User requests Modjoul to provide them with information relating to Processing of their Personal Data, or to make changes to their Personal Data, then Modjoul will promptly notify Customer of the request, unless otherwise required by applicable law. Customer may make changes to User data using the features and functionality of the Modjoul Platform. Modjoul will not make changes to User data except as agreed in writing with Customer.

**7.8. Breach Notification.** Modjoul will notify Customer of any breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to Customer Data in Modjoul's

possession or under its control (a “**Security Incident**”) within 72 hours of Modjoul’s confirmation of the nature and extent of the same or when required by applicable law, whichever is earlier. Each party will reasonably cooperate with the other with respect to the investigation and resolution of any Security Incident including, in the case of Modjoul, prompt provision of the following, to the extent then known to Modjoul: (i) the possible cause and consequences of the Security Incident; (ii) the categories of Personal Data involved; (iii) a summary of the unauthorized recipients of the Customer Data; and (iv) the measures taken by Modjoul to mitigate any damage. Upon confirmation of any vulnerability or breach of Modjoul’s security affecting Customer Data in Modjoul’s custody and control, Modjoul will modify its processes and security program as necessary to mitigate the effects of the vulnerability or breach upon such Customer Data. Insofar as the Security Incident relates to Customer, and except to the extent required otherwise by applicable law, Customer will have approval rights on notifying its Users and any third-party regulatory authority of the Security Incident. All Security Incident or security compromise notifications will be via the Modjoul Platform dashboard or account center, and via email to the persons designated by Customer to receive notices in the Modjoul Platform dashboard or account center.

## 8. INDEMNIFICATION

### 8.1. **Modjoul Infringement Indemnity.**

8.1.1. *Defense and Indemnity.* If any third party makes any claim against Customer that alleges an Modjoul Infringement (defined in Section 4.1.4) then, upon notification of such claim, Modjoul will (subject to 8.3 below), at its sole cost and expense, defend Customer against such claim and any related proceeding brought by such third party against Customer, and indemnify Customer from and against all damages, fines and penalties finally awarded against Customer or agreed to be paid by Customer in a written settlement approved in writing by Modjoul, and resulting from the Modjoul Infringement.

8.1.2. *Modjoul’s Mitigation Rights.* If any Subscription Services become (or in Modjoul’s opinion are likely to become) the subject of any infringement or misappropriation claim, Modjoul may, and if Customer’s use of the Subscription Services is enjoined, Modjoul must, at its sole expense, either: (i) procure for Customer the right to continue using the relevant Subscription Services; (ii) replace or modify the relevant Subscription Services in a functionally equivalent manner so that they no longer infringe; or (iii) terminate the applicable Sales Order or Customer’s rights to use affected Subscription Services, and refund to Customer a pro-rata amount of any subscription fees prepaid to Modjoul and applicable to the unutilized portion of the Subscription Term for the terminated Subscription Services.

8.1.3. *Exclusions.* Notwithstanding the foregoing, Modjoul will have no obligation with respect to any infringement or misappropriation claim to the extent based upon (i) any use of the Subscription Services not in accordance with their applicable license rights, (ii) the combination of the Subscription Services with other products, equipment, software, services or data not supplied by Modjoul where the infringement would not have occurred but for such combination, or (iii) any Customer Data.

### 8.2. **Customer’s Consent Indemnification.**

8.2.1. *Defense and Indemnity.* If any third party makes any claim against Modjoul that alleges a non-conformance with the Customer Consent Obligation (defined in Section 7.1.2) then, upon notification of such claim, Customer will (subject to Section 8.3 below), at its sole cost and expense, defend Modjoul against such claim and any related proceeding or investigation brought by such third party against Modjoul, and Customer will indemnify Modjoul from and against all damages, fines and penalties finally awarded against Modjoul or agreed to be paid by Modjoul in a written settlement approved in writing by Customer, and resulting from the non-conformance. Customer’s obligations under this Section 8.2.1 are subject to Modjoul’s compliance with the Indemnification Conditions.

8.2.2. *Mitigation Rights.* If Customer Data is, or in Customer’s reasonable opinion is likely to become, the subject of a claim of non-conformance with the Customer Consent Obligation, then Customer will have the right to:

(i) procure the rights necessary for Customer and Modjoul to continue to Process the affected Customer Data; (ii) modify the Customer Data so that there is no longer a non-conformance; or (iii) delete or otherwise remove the non-conforming Customer Data from the Modjoul Platform.

8.2.3. *Exclusions.* Notwithstanding the foregoing, Customer will have no obligation under this Section 9.2 or otherwise with respect to any claim of non-conformance with the Customer Consent Obligation to the extent based upon Modjoul's Processing of the affected Customer Data other than in accordance with this Agreement.

8.3. **Indemnification Conditions.** In order to be entitled to defense or indemnification under the Agreement by the other party, the following shall apply: (i) the indemnified party notifies the indemnifying party in writing of any claim that might be the subject of indemnification promptly after any executive officer of the indemnified party or member of the indemnified party's legal department first knows of the claim, provided, however, that no failure to so notify an indemnifying party will relieve the indemnifying party of its obligations under this Agreement except to the extent that such failure materially prejudices defense of the claim, and except to the extent of damages incurred by the indemnifying party as a result of the delay; (ii) the indemnifying party is given primary control over the defense and settlement of the claim (subject to the foregoing, the indemnified party may nonetheless participate in the defense at its sole cost and expense); (iii) the indemnified party makes no admission of liability (except as required by applicable law) nor enters into any settlement without the indemnifying party's prior written agreement (not to be unreasonably withheld); (iv) the indemnified party provides such assistance in defense of the proceeding as the indemnifying party may reasonably request, at the indemnifying party's reasonable expense; and (v) the indemnified party uses all commercially reasonable efforts to mitigate its losses.

## 9. LIMITATION OF LIABILITY

9.1. **Exclusion of Certain Claims.** SUBJECT TO SECTION 9.3, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR TO ANY THIRD PARTY FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR EXEMPLARY DAMAGES, WHETHER FORESEEABLE OR UNFORESEEABLE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, ARISING OUT OF (i) THE PERFORMANCE OR NON-PERFORMANCE OF THIS AGREEMENT OR ANY RELATED AGREEMENT, OR ANY SOFTWARE, PRODUCTS OR SERVICES PROVIDED HEREUNDER, OR (ii) ANY CLAIM, CAUSE OF ACTION, BREACH OF CONTRACT OR ANY EXPRESS OR IMPLIED WARRANTY, UNDER THIS AGREEMENT, ANY RELATED AGREEMENT OR OTHERWISE, MISREPRESENTATION, NEGLIGENCE, STRICT LIABILITY, OR OTHER TORT.

9.2. **Limitation of Liability.** Subject to Section 9.3, neither party's maximum aggregate liability arising out of this Agreement or any related agreement will in any event exceed the fees paid or payable to Modjoul under the Sales Order giving rise to the claim during the 12 month period immediately preceding the aggrieved party's first assertion of any claim against the other, regardless of whether any action or claim is based in contract, misrepresentation, warranty, indemnity, negligence, strict liability or other tort or otherwise.

9.3. **Exceptions.** Sections 9.1 and 9.2 do not apply to either party's (i) fraud, willful misconduct or gross negligence, (ii) infringement or misappropriation of any of the other's Intellectual Property Rights, (iii) defense and indemnification obligations under this Agreement, or (iv) liability or loss which may not be limited by applicable law. Section 9.2 does not apply to (i) Customer's obligations to pay fees and expenses when due and payable under this Agreement, (ii) either party's obligations under Section 6 (Confidential Information) or Section 7 (Data Handling), provided, however, that except to the extent of willful misconduct or gross negligence of Modjoul, Modjoul's maximum aggregate liability under Section 7 will not exceed two times (2X) the fees paid or payable by Customer to Modjoul under the affected Sales Order in the 12 month period immediately preceding Customer's first assertion of its claim.

9.4. **Limitation on Suit.** Customer may not bring any action, regardless of form, arising out of any transaction under this Agreement, more than one (1) year after Customer receives knowledge of the occurrence that gives rise to the cause of such action.

## 10. GENERAL PROVISIONS

10.1. **Relationship of the Parties.** Nothing contained herein shall be deemed to create any association, partnership, joint venture or relationship of principal and agent or master and servant or employer and employee between the parties hereto or any affiliates or subsidiaries thereof, or to provide either party with the right, power or authority, whether express or implied, to create any duty or obligation on behalf of the other party.

10.2. **Notices.** Any notice or other communication required or permitted by this Agreement or by law to be served on or given to any party shall be in writing and shall be deemed served and given when personally delivered to the party to whom it is directed, or in lieu of such personal service, (a) three days after deposit in the United States mail, postage prepaid, registered or certified, return receipt requested, or (b) the next business day following transmission by fax or e-mail, sent in each case to the addresses set forth below the signatures on this Agreement.

10.3. **Assignment.** This Agreement is personal to Customer. Customer shall not assign or otherwise transfer any rights or delegate any duties under this Agreement without the prior written consent of Modjoul. Any attempted assignment, transfer or delegation without such consent shall be null and void.

10.4. **Force Majeure.** If the performance of this Agreement is adversely restricted or if either party is unable to conform to any warranty or obligation by reason of any Force Majeure Event then, except with respect to obligations to pay any fees or expenses, the party affected, upon giving prompt written notice to the other party, will be excused from such performance on a day-to-day basis to the extent of such restriction (and the other party will likewise be excused from performance of its obligations on a day-to-day basis to the extent such party's obligations relate to the performance so restricted); provided, however, that the party so affected will use all commercially reasonable efforts to avoid or remove such causes of non-performance and both parties will proceed whenever such causes are removed or cease. "**Force Majeure Event**" means any failure or delay caused by or the result of causes beyond the reasonable control of a party or its service providers that could not have been avoided or corrected through the exercise of reasonable diligence, including natural catastrophe, internet access or related problems beyond the demarcation point of the party's or its applicable infrastructure provider's facilities, state-sponsored malware or state-sponsored cyber-attacks, terrorist actions, laws, orders, regulations, directions or actions of governmental authorities having jurisdiction over the subject matter hereof, or any civil or military authority, national emergency, insurrection, riot or war, or other similar occurrence. If a party fails to perform its obligations as a result of such restriction for a period of more than 30 days, then the other party may terminate the affected Services without liability.

10.5. **Governing Law; Jurisdiction; Attorney's Fees.** This Agreement shall be governed by and interpreted in accordance with the internal laws of the State of Washington without regard to its conflict of laws provisions. Any litigation between the parties concerning these terms and conditions shall be brought in Superior Court of King County Washington or in the U.S. District Court for the Western District of Washington, and Customer consents to such courts having personal jurisdiction and that venue is proper in either of such courts. If any litigation is brought to enforce, or arises out of, this Agreement or any term, clause, or provision hereof the prevailing party shall be awarded its reasonable attorneys' fees together with expenses and costs incurred with such litigation, including necessary fees, costs, and expenses for services rendered, as well as subsequent to judgment in obtaining execution thereof.

10.6. **Interpretation.** The titles of the sections of this Agreement are for convenience only and shall not affect the interpretation or construction of any section. The language used in this Agreement shall be deemed to be the language chosen by the parties hereto to express their mutual agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in the construction or interpretation of this Agreement. The words "include" and "including" and variations thereof are not terms of limitation, but rather shall be deemed to be followed by the words "without limitation."

10.7. **Waiver.** Failure to exercise any right will not operate as a waiver of that right, power, or privilege. A waiver of any of the terms of this Agreement, or any breach or default hereunder, shall not be deemed or construed as a waiver of such terms for the future or any subsequent breach or default, whether or not of the same or similar nature.

10.8. **Notices.** Except as otherwise set forth herein, notices made by Modjoul to Customer under this Agreement that affect Users generally will be posted on the Subscription Services site. Notices that affect Customer specifically (e.g., notices of breach and/or suspension) will be provided to Customer via Customer billing address. Notices to Modjoul may be sent to the return address specified on any current invoice or statement.

10.9. **Entire Agreement; Severability; Modification.** This Agreement, including the warranty and any other policies referenced herein, represents the entire agreement between the parties with respect to the subject matter hereof and all other negotiations, understandings and agreements relating thereto, whether written or oral, including but not limited to all requests for proposal, proposals, payments or other forms, are nullified and superseded hereby. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement. This Agreement may only be modified, amended, or supplemented in a written document signed by authorized signatories of both parties subsequent to the date of execution of this Agreement.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by their duly authorized representatives, as of the day and year first above written.

MODJOUL, INC.

CUSTOMER

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

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

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

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

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

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

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

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

## EXHIBIT A

### Support & Service Level Agreement

This Support & Service Level Agreement sets the expectations for scope of support services, data backups and network uptime for the Subscription Services.

#### AVAILABILITY OF SUBSCRIPTION SERVICES

During the Term, Modjoul shall provide 99% uptime with respect to the availability of the Subscription Services during each calendar quarter commencing on the Effective Date and continuing until Modjoul's obligations hereunder no longer remains in effect, excluding regularly scheduled maintenance times. Modjoul will make good-faith efforts to perform maintenance to the Subscription Services outside peak usage hours.

Customer acknowledges that availability of the Service may be affected by: (a) telecommunication network activity or capacity; (b) hardware failures; and/or (c) compatibility with third-party communication equipment, Internet access software, and/or browsers not in accordance with the Service requirements. Modjoul disclaims any and all responsibility for any service interruption in connection with such activity, capacity, failure, or compatibility. Customer is responsible for providing all equipment and telecommunication services necessary to access the Service. Customer is further responsible for saving all data and interfaces to its own storage media.

#### SERVICE LEVEL AGREEMENT – SCOPE OF SUPPORT SERVICES

Modjoul will use timely and reasonable efforts to provide the following services for Customer:

- Standard e-mail support at [email for support?] 24/7/265
- Telephone support at [PHONE NUMBER] 9-5 (pacific), Monday-Friday.

#### SERVICE LEVEL AGREEMENT – ERROR SEVERITY

**ERROR SEVERITY LEVELS:** Modjoul will exercise timely and reasonable efforts to correct any Error (as defined below) reported in the current unmodified release of the Service in accordance with the Severity level reasonably assigned to such Error by Customer. Severity levels are defined below.

**Severity 1 Errors** — Modjoul will promptly commence the following procedures upon notification of the problem during Regular Hours and upon confirmation by Modjoul that the Error is a Severity 1 Error:

1. Within the first four (4) business hours, Modjoul will document and commence recreation and resolution of the problem;
2. If resolution has not been determined after the initial eight business hours, Modjoul will mobilize a technical team to troubleshoot the problem and define solution options;
  - a. Modjoul will assign a company representative to oversee and report on all corrective action activities;
  - b. Modjoul will notify Customer of problem resolution status and will report on the status every twelve (12) hours thereafter.

**Severity 2 Errors** — Modjoul will exercise timely and reasonable efforts to provide a Fix as soon as an Error has been identified and the appropriate Fix developed.

**Severity 3 (or lower) Errors**—Modjoul will exercise timely and reasonable efforts to include the Fix for the Error in a future release.

Customer is responsible for providing sufficient information and data to allow Modjoul to readily reproduce all reported Errors. If Modjoul believes that a problem reported by Customer may not be due to an Error in the Services, Modjoul will notify Customer.

#### DEFINITIONS

- "Error" means an error in the Subscription Services that significantly impairs such Subscription Services as compared to the published product documentation.

- “Fix” means the repair or replacement of object or executable code versions of the Subscription Services to remedy an Error.
- “Severity 1 Error” means an Error that renders the Subscription Services inoperative. When attempting to use the Subscription Services, the user is prevented from performing a necessary function and there is no acceptable Workaround.
- “Severity 2 Error” means an error in which major functionality is experiencing a reproducible problem that causes major inconvenience to the user. A Workaround may exist, but it has high user impact.
- “Severity 3 Error” means an Error in which an important function is experiencing an intermittent problem, or a common non-essential operation is failing consistently.
- “Workaround” means a change in the procedures followed or data supplied by Customer to avoid an Error without substantially impairing use of the Services.

**SERVICE LEVEL AGREEMENT – SERVICE AVAILABILITY DEFINITIONS**

**Service unavailability** – Service unavailability means the Modjoul Mentor Service is not available to a valid user for more than five minutes. The following does not contribute towards unavailability calculations:

1. Scheduled downtime for maintenance and service upgrades;
2. Negligent actions or willful misconduct of Customer’s agents, employees or vendors;
3. Failure of hardware owned or operated by Customer;
4. Downtime caused by Customer’s network or the Internet.
5. Circumstances beyond Modjoul’s control including, without limitation, acts of any governmental body, war, sabotage, embargo, fire, flood, extended unavailability of Public Utility Service or unavailability or delay in telecommunications, or third-party Internet Service Providers.

**Service Credit** – If Modjoul fails to meet the availability mentioned above, Customer may submit claim for a Service Credit. Customer must submit Service Credit request by email to [xxxxx]@Modjoul.com that includes:

- Date, time and duration of the downtime
- Number and location(s) of impacted users
- Description of Customer’s attempts to resolve the incident at the time of occurrence.

The claim must be received within thirty (30) business days following the end of the downtime. Modjoul will consider all the available information reasonably available to it and make a good faith judgment on whether a service credit is owed. If Service Credit request is received after thirty (30) business days, it is at the discretion of Modjoul to issue Service Credit.

The Service Credit shall be:

MONTHLY UPTIME PERCENTAGE	SERVICE CREDIT
<99.9%	10% of Monthly Fee (excludes one-time payments)

Service Credit shall be issued to Customer's Modjoul balance for future use only. No refunds or cash value will be provided. Service Credits may not be transferred or applied to any other account.