**Equinoxe Virtual Clinic Corporation**

**Standard Terms and Conditions of Engagement**

**(the “Agreement”)**

**WHEREAS** Equinoxe Virtual Clinic Corporation (“**EQ** **Care**”) operates a platform connecting individuals to a geographically distributed network of independent Canadian doctors, nurses, nurse practitioners and mental health professionals, in a range of specialties, via an online app, accessible 24/7, utilizing private video, secure messaging, file sharing and patient care plans (the “**Services**”).

**WHEREAS** \_\_\_\_\_\_\_\_\_\_\_\_ (the “**Client**”) wishes to engage the services of EQ Care in order to provide its employees and their dependents with the comfort in knowing they can connect with Canadian-based and licensed health care practitioners when they need medical advice and care and better access to care, without having to endure long wait times or physical dislocation from a preferred location;

**NOW** **THEREFORE**, in consideration of the foregoing, EQ Care and the Client (collectively, the “**Parties**”, and each a “**Party**”), agree as follows:

1. **Entire Agreement**. This Agreement shall constitute the entire agreement, and supersedes all other representations, proposals, understandings, or agreements relating to the subject matter thereof. This Agreement may only be amended by a written agreement signed by both parties.
2. **Cooperation and Information.** The Client shall cooperate with EQ Care in the performance of the EQ Care Services. The Client shall be responsible to ensure that EQ Care is provided with an accurate and up to date list of all eligible participants for the Services under this Agreement, as well as any other information reasonably required by EQ Care. The Client hereby acknowledges that EQ Care will rely on this information as being accurate and complete, and EQ Care will not independently verify this information. EQ Care may also rely on the directions provided by the Client concerning the provision of the EQ Care Services, including without limitation directions with respect to the interpretation of the Client’s employee benefit plans or matters reflecting the exercise of discretion by the Client or the administrator of such plans. If the information provided by the Client is inaccurate, incomplete, or delayed, the scope of EQ Care Services may be different, the schedule may be delayed, or EQ Care may be unable to perform some or all the EQ Care Services, and EQ Care shall have no liability in connection therewith.

EQ Care is ISO 9001:2015 certified and maintains strict professional standards, providing high quality of service in a manner that seeks to optimize access to healthcare services and treatment. EQ Care will continuously measure and track performance of the Services through feedback and assessment by the users. The Client will be provided with a quarterly aggregate report of the service level findings on such formats as used by EQ Care. EQ Care can provide the Client with the following, upon request:

1. An information brochure for management and HR professionals;
2. Brochures for employees and their dependents;
3. Sample communication letters for managers and employees; and
4. An instructional video
5. **Fees.** The Client will pay to EQ Care fee calculated as follows (collectively, the “**Fees**”):

|  |  |  |
| --- | --- | --- |
| **PROVINCE** | **PRICE PER MONTH, PER INDIVIDUAL (+ tax)** | **PRICE PER MONTH, PER FAMILY\* (+ tax)** |
| British Columbia | $ | $ |
| Rest of Canada | $ | $ |
|  |  |  |

\*For the purposes of this Agreement “**Family**” means Spouse and Dependent child.

“**Spouse**” – A spouse is the person who, on the date of the event giving entitlement benefits:

a. Is married or civilly united to the participant; or

b. Has been cohabiting in a conjugal relationship with the participant for at least one year.

“**Dependent child**” – the term designates any of the following individuals:

a. A person under the age of majority for whom the participant or spouse exercises parental authority, or a person under age 21, provided that person has no spouse and depends to a large degree on the participant or participant’s spouse for support.

b. A person under age 26, who has no spouse and is attending a recognized educational institution as a duly registered full-time student, and for whom the participant or spouse would exercise parental authority if a minor.

* 1. **Invoices**. Invoices for the Fees are payable by the Client within thirty (30) days of the date thereof. Interest on unpaid invoices will accrue at a rate of 1% per month (12.68% per annum, compounded monthly) beginning thirty (30) days after the invoice date. For account budgeting purposes, EQ Care will invoice the Client monthly, and reconcile to reflect additions and terminations of active employees/users, on a monthly basis.
	2. **Fees on Renewal.** The Fees offered to the Client represent an initial rate offering for the first year from the date of this Agreement. Following which, annual fees for the EQ Care Services renew effective as of each anniversary date of the Agreement based on the renewal fee formula set forth in Schedule A hereto.
1. **Taxes.** The EQ Care service fees and rates do not include any applicable federal, provincial, harmonized, or any other goods and services, sales, or any other taxes or duties whether presently in force or imposed in the future. Any such taxes and duties shall be assumed and paid by the Client without deduction from the fees and charges hereunder.
2. **Confidentiality**. EQ Care will treat as such all confidential information obtained from the Client in the course of performing the EQ Care Services, and, except as provided in this paragraph, will not use or disclose such information except in connection with the performance of the EQ Care Services. Notwithstanding the foregoing or anything in to the contrary in this Agreement, EQ Care shall have the right, to the extent permitted by applicable law, to compile, use, or disclose any anonymized patient data obtained pursuant to this Agreement, as further set out in the user terms and conditions and privacy policy (which are found at eqcare.com) applicable between EQ Care and all end users of the EQ Care Services (including, without limitation the Client employees). This restriction will not apply to any confidential information that EQ Care is required by law, or professional standards, to disclose; that is in or subsequently enters the public domain, otherwise than as a result of a breach of this Agreement; that is now or subsequently becomes known to us without breach of any confidentiality obligation of which we are aware; or that is independently developed by EQ Care without reference to the Client confidential information.

EQ Care agrees that with respect to each employee’s personal health information and other individually identifiable information (“**Personal** **Information**”):

* 1. it shall not, other than on an anonymized basis and in accordance with any applicable law, use, access, manage, transfer, or disclose Personal Information collected in the performance of the EQ Care Services, beyond what is necessary to perform the EQ Care Services;
	2. from the date of commencement of the provision of the EQ Care Services and continuously during the term of this Agreement, it shall have in place the technological, physical and organization security safeguards to protect Personal Information against anticipated threats or hazards, loss, theft, unauthorized access, disclosure, copying, use, modification, disposal and destruction;
	3. it will protect Personal Information in its possession as required by, and in compliance with, all privacy laws and this Agreement; and;
	4. to the extent permitted by applicable law it shall cooperate with the Client to respond to any complaints related to compliance obligations of Personal Information.

Each Party acknowledges that in performing its obligations hereunder it may have access to and receive (“**Receiving** **Party**”) certain confidential and/or proprietary information including without limitation lists of employees, software, knowledge, data, financial information, tools, methodologies, processes, plans, procedures, techniques, manuals, treatment protocols, clinical indicators, case rates, provider payment structure information, underwriting methodology, proprietary rating plans, provider practice data, employee-outcomes data, audit reports and actuarial analyses (collectively “**Confidential** **Information**”) from the other Party (“**Disclosing** **Party**”). The Receiving Party agrees not to give, sell or in any way transfer, either directly or indirectly, Confidential Information to any third party except with the express written consent of the Disclosing Party. Receiving Party agrees not to use, either directly or indirectly, Confidential Information for its own purposes or the purposes of others at any time other than as provided for in this Agreement. The Parties acknowledge and agree that the names of all EQ Care medical professionals and consultants are deemed to be Confidential Information of EQ Care.

Confidential Informational will not include information which is:

* + 1. or becomes a part of the public domain through no act, omission or other breach of this Agreement by Receiving Party;
		2. lawfully obtained by Receiving Party from a third party who is not under any legal obligation to refrain from disclosing such information;
		3. independently developed by employees of Receiving Party who are not recipients of the Confidential Information, as provided by written documentation evidencing same; or
		4. disclosed by legal requirement as provided by an opinion of counsel, and in such case only upon prompt written notice to Disclosing Party providing an opportunity to limit such disclosure, to the extent permitted by law or government authority.

Receiving Party agrees to maintain the confidential nature of the Confidential Information by limiting access to such information to only those individuals that are directly involved in performing obligations under this Agreement. The Parties agree to keep the Confidential Information of Disclosing Party secure and confidential to the same extent the Receiving Party maintains its own Confidential Information, and no less than commercially reasonable protections.

Upon a termination of this Agreement, the Receiving Party agrees to return any and all Confidential Information of the Disclosing Party upon written notice subject to any obligations of applicable law or internal data retention policy, to the extent the Receiving Party agrees that it shall not access such retained Confidential Information for any purpose other than archival purposes.

1. **Representations and Warranties of EQ Care**. EQ Care represents and warrants that:
	1. It shall provide the Services and perform its obligations in good faith, in a timely manner, exercising reasonable skill, care and diligence, all in accordance with recognized professional and industry standards, and this Agreement;
	2. The Services and the use thereof by the Client, will not misappropriate or in any way infringe upon any third-party intellectual property rights;
	3. EQ Care and its personnel possess the knowledge, skill, qualifications and experience necessary to perform their obligations in accordance with this Agreement;
	4. EQ Care shall ensure (to the extent reasonably possible) that all medical professionals operating on its platform are licensed and in good standing with their applicable regulatory bodies
	5. EQ Care and its personnel shall comply with applicable laws; and
	6. EQ Care has the necessary authority and capacity to enter into and perform its obligations under this Agreement.

OTHER THAN THE REPRESENTATIONS AND WARRANTIES SET OUT IN SECTION 6 (REPRESENTATIONS AND WARRANTIES OF EQ CARE), CLIENT AGREES THAT EQ CARE MAKES NO OTHER REPRESENTATIONS OR WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE SERVICES.

1. **Intellectual Property Rights**. The Client acknowledges and agrees that EQ Care shall solely own and shall retain all rights, titles, and interest in and to the EQ Care intellectual property which includes but is not limited to:
2. All EQ Care trademarks and service marks.
3. All EQ Care logos.
4. All EQ Care domain names including, without limitation, [www.eqcare.com](http://www.eqcare.com) .
5. All EQ Care proprietary methods, trade secrets, inventions, and/or other confidential and proprietary information of EQ Care.

(Collectively the “**EQ Care IP**”)

In addition, EQ Care shall have a royalty-free, worldwide, perpetual license to use and to incorporate into the EQ Care IP any suggestions, ideas, enhancement requests, feedback, or recommendations provided by the Client or its affiliates, employees, agents, or members with respect to the EQ Care Services. The Client acknowledges and agrees that except as may be specifically granted by EQ Care in this Agreement, the Client shall acquire no rights, titles or interest in or to the EQ Care IP.

During the term of this Agreement, EQ Care grants the Client a limited license to utilize the EQ Care IP solely in connection with the promotion (by the Client) and use (by its employees) of the EQ Care Services and strictly in accordance with the EQ Care usage policies as set forth at www.eqcare.com, as such policies may be amended from time to time by EQ Care. The Client understands and accepts that all users of the EQ Care Services must agree to the EQ Care usage user terms and conditions as well as privacy policy in order to receive the Services.

 The Client acknowledges and agrees that the EQ Care Services will not be re-branded by the Client but instead will reference the delivery of such EQ Care Services by EQ Care. Before the Client publishes or disseminates any materials to its employee’s or any other persons promoting or referencing the EQ Care Services, the Client will deliver a draft of the materials to EQ Care for prior approval, which will not be unreasonably withheld. The Client warrants that it shall not, at any time, publish or disseminated any materials which have not been previously approved by EQ Care.

Notwithstanding anything in this Agreement to the contrary, EQ Care may use the Client corporate name and logo in connection with its marketing activities, and only for so long as this Agreement remains in force. For greater certainty, EQ Care may use the Client’s logo and corporate name on its website as a client of EQ Care, as well as when responding to a request for proposals, as a reference and client. EQ Care shall not acquire any other rights, titles, or interest in or to the Client corporate name and logo or other the Client intellectual property, except as specifically set out in this Agreement. The Client may require removal of its name of logo (upon written notice) from any marketing material if, and to the extent, such are being used by EQ Care in a fraudulent manner or in breach of this Agreement. The Client will provide a digital logo high resolution to EQ Care upon request, to use for the purposes hereof.

1. **Restriction on Use.** The services and materials delivered in connection with the EQ Care Services are provided by EQ Care and may not be disclosed, published, made available or relied upon by any other person, without EQ Care’s express written permission. This Agreement is not intended for the express or implied benefit of any third party.
2. **Force Majeure.** Neither party shall be liable for delays resulting from circumstances or causes beyond its control, including without limitation, fire or other casualty, act of God, strike or labour dispute, war or other violence, or any law, order or requirement of any governmental agency or authority (it being understood that the foregoing shall not apply to payment obligations of the Client).
3. **Terms and Termination**. This Agreement shall be for an initial term of five (5) years and shall automatically renew for successive one (1) year periods thereafter unless (i) either Party sends written notice to the other of its intention not to renew the Agreement, (ii) it is terminated in accordance with this Agreement. After the first year of the term, either party may terminate this Agreement by providing ninety (90) days’ prior written notice to the other party in the event of a default that is not cured by the defaulting party within thirty (30) days of notice thereof. The Client will pay EQ Care for fees and expenses incurred to the termination date, specified in the notice of termination (which date shall not be less than ninety (90) days after the date the notice of termination is received by the other party).
4. **Limitation of Liability**. If any of EQ Care’s services do not conform to the requirements of this Agreement, the Client shall first notify EQ Care promptly and EQ Care shall be granted a reasonable time in which to attempt to remedy the non-conformance in a timely fashion.

Notwithstanding anything in this Agreement to the contrary, the entire liability of a EQ Care to the Client (including any of their respective employees, principals, affiliates, agents, contractors or those for whom each Party is responsible for at law), under this Agreement, with respect to any cost, expense, damages, loss, injury or liability of any kind or from any cause whatsoever incurred by the Client, and regardless of the form of action or the cause of action, whether in contract or in tort (including negligence), strict liability, breach of a fundamental term, fundamental breach or otherwise shall not exceed the amount of fees paid to EQ Care for the EQ Care Services by the Client for the preceding twelve (12) month period. This limitation is cumulative and not per incident. Notwithstanding the foregoing, this limitation of liability shall not apply to (i) any breach of third party intellectual property by EQ Care in the carrying out of this Agreement and the Services, or (ii) any gross negligence or willful misconduct by EQ Care.

In no event shall EQ Care be liable for consequential, special, indirect, incidental, punitive or exemplary damages, costs, expenses, or losses of any kind (including without limitation lost profits and opportunity costs) towards the Client. The Client is responsible for any decisions the Client makes as a result of or in connection with the EQ Care Services. For the purposes of this paragraph, the term EQ Care includes its related network partner physicians and service staff. This paragraph shall apply regardless of the form of action, damage, claim, liability, cost, expense, or loss, whether in contract, statute, tort (including negligence) or otherwise. The Client understands that medical practitioners providing a portion of the EQ Care Service benefit from their own professional insurance and that EQ Care will have no liability towards the Client and any of their employees or any other person with respect a claim of medical malpractice.

1. **Indemnification**. EQ Care will indemnify and hold the Client harmless from and against any third-party claim or liability to the extent arising from or in connection with the negligence of EQ Care or its employees or agents in the course of performing the EQ Care Services. The limitation of liability set forth in paragraph 11 above applies to EQ Care’s indemnity obligations pursuant to this paragraph, but the limitation will not apply to the extent that any liability arises from the gross negligence or willful misconduct of EQ Care, its employees, or affiliates). Except to the extent that EQ Care is obligated to indemnify the Client, the Client will indemnify and hold EQ Care, its employees, agents and alliance partners, harmless from any third-party claims, damages, penalties, losses or liability of any kind, to the extent arising from or in connection with the acts, omissions, negligence or breach of this Agreement by the Client, its employees, affiliates, agents or others for whom the Client is responsible for at law.
2. **Dispute Resolution**. The Parties will attempt to resolve any dispute or claim arising from or in connection with this Agreement by appropriate internal means, including referral to each party’s senior management. If the parties cannot reach a mutually satisfactory resolution, then any such dispute or claim will be settled by binding arbitration in accordance with the *Quebec Code of Civil Procedure* (the “**CCP**”), and judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction. The arbitration will be conducted before a single neutral arbitrator, selected jointly by the parties hereto, or, if they should fail to agree upon an arbitrator, in accordance with the CCP. The arbitrator’s decision shall be final and binding on the parties. Notwithstanding the foregoing, this section will not prevent any party from pursuing equitable remedies to the extent required to protect rights or property or to prevent irreparable harm. If any dispute or claim between the parties is subject to judicial proceedings, each party expressly waives any right it might have to demand a jury trial in such proceedings.
3. **EQ Care Not a Fiduciary**. EQ Care is not being engaged to perform any fiduciary functions, including those of any plan administrator, with respect to the Client employees or any disability plan of the Client employees. If EQ Care is deemed to be a fiduciary with respect to any Services, EQ Care’s responsibility as a fiduciary shall extend only to those activities deemed to be fiduciary activities under applicable law and shall in no event extend to any acts or omissions of any other person.
4. **Survival**. Terms which by their nature survive expiration or termination of this agreement shall survive, including sections 3,5,7,11,12,13 and 17.
5. **Independent Contractor**. It is understood and agreed that each of the parties is an independent contractor and that neither party is, nor shall be considered to be an agent, distributor, partner, fiduciary, joint venturer or representative of the other. Neither party shall act or represent itself, directly or by implication, in any such capacity in respect of the other or in any manner assume or create any obligation on behalf of, or in the name of, the other.
6. **Governing Law.** This Agreement shall be governed by the laws of the Province of Quebec and the laws of Canada applicable therein.
7. **Severability**. In the event that any provision of this agreement shall be held to be invalid, void, or unenforceable, then the remainder of this agreement shall not be affected, impaired, or invalidated, and each such provision shall be valid and enforceable to the fullest extent permitted by law.
8. **Assignment**. This agreement shall be binding upon both parties and our respective successors and permitted assigns. EQ Care is permitted to assign, transfer, or delegate any of its rights or obligations to any affiliate or successor in interest to all or substantially all of the assets or business of the relevant EQ Care practice, without your consent, in which case, such affiliate or successor in interest shall be bound by and entitled to the benefit of the Terms and Conditions of this Agreement.
9. **Amendment**. Only an instrument in writing duly executed by the parties may amend this Agreement.
10. **Waiver**. No act or omission of a party, nor any condoning, exclusion or overlooking by the other party of any default, breach or non-observance by a party at any time in respect of any provision of this Agreement, shall operate as a precedent or as a waiver of the other party's rights under this Agreement in respect of any subsequent default, breach or non-observance.

These Standard Terms and Conditions are agreed and acknowledged by the Client.:

|  |  |  |
| --- | --- | --- |
|  |  | **[Client]** |
| Signature: |  |
|  |  |
| Name: |  |
| Title: |  |
|  |  | Date: |  |
|  |  |  |

These Standard Terms and Conditions are agreed and acknowledged by EQUINOXE VIRTUAL CLINIC

CORPORATION:

|  |  |  |
| --- | --- | --- |
|  |  | EQUINOXE VIRTUAL CLINIC CORPORATION |
| Signature: |  |
|  |   |
| Name: |   |
|  |  | Title: |  |
|  |  | Date: |  |
|  |  |  |

**SCHEDULE A**

**Annual Fees applicable in each subsequent Contract Year**

Annual fees (rates) for each future contract year are determined by comparing the actual user utilization rate in a given contract year against the expected utilization rate (determined taking into account the actual utilization rate in the immediately preceding contract year) as well as associated trend and inflation factors.

On an annual basis, EQ Care and the Client will mutually agree to review the base rates in accordance with the following utilization tier and apply the respective discount or increase to the previous years’ base rates.

|  |
| --- |
| Number of Consultations/Lives |
| Usage | Renewal Rate |
| < 20.0% | -5.00% |
| 20.0%-30.0% | 0.00% |
| 30.0% - 40.0% | 3.00% |
| 40.0% - 45.0% | 5.00% |
| > 45.0% | 10.00% |