

# ATHLETICO

## PHYSICAL THERAPY

### EXHIBIT A – TERMS AND CONDITIONS

- 1. Engagement; Payment.** Client hereby engages Athletico to provide the services (the “Services”) set forth on the Statement of Work (the “SOW”) executed by the Parties. In consideration for the performance of such Services, Client shall perform its obligations and pay Athletico the fees set forth on the SOW. Client shall pay all invoiced amounts within thirty (30) days after its receipt thereof. Any amounts not paid within such time frame shall bear interest at the rate of 1% per month (or the highest rate permitted by applicable law, if lower) until final payment is made.
- 2. Term; Termination.** Unless otherwise provided in the SOW and agreed to by the Parties, the initial term of the SOW shall be one (1) year from the Effective Date; provided, that the SOW shall automatically renew for additional one (1) year terms unless either Party notifies the other Party at least thirty (30) days before the end of the then-current term of its intention not to renew the SOW (the initial term plus any renewal terms, the “Term”). Either Party may terminate the SOW (a) upon notice in the event of a breach of the SOW by the other Party that is not cured within thirty (30) days after written notice thereof or (b) upon sixty (60) days prior written notice at any time (with or without cause). Upon termination or expiration of the SOW, the rights and obligations of each Party hereunder shall terminate; provided, that the obligations of the Parties under Sections 2, 3, 5, 7, 9 and 14 shall survive any such termination or expiration.
- 3. Non-Interference.** During the Term and for a two (2)-year period thereafter, Client shall not (a) induce or attempt to induce any employee of Athletico or its affiliates to terminate his or her employment with Athletico, or (b) otherwise solicit, hire, or recommend that any third party hire, any employees of Athletico or its affiliates, or otherwise assist any third party in connection with any of the foregoing actions, including using the services of a third party that has hired an employee who worked for Athletico or its affiliates within the prior two (2) year period.
- 4. Insurance.** During the Term, each Party shall procure and maintain adequate and commercially reasonable insurance coverage from financially responsible insurance companies duly authorized to provide such insurance in the state of such Party’s organization. Client shall add Athletico as an additional insured under its liability insurance policy and provide evidence thereof to Athletico.
- 5. Confidentiality.** Client acknowledges that any proprietary, confidential or other information provided by Athletico to Client concerning the business, properties and operation of Athletico and its affiliates, including, without limitation, any trade secrets (as defined in the Illinois Trade Secrets Act, Illinois Compiled Statutes, 765 ILCS 1065/1 et seq.) and the terms of the SOW (collectively, “Confidential Information”), is valuable, special, unique and a proprietary asset of Athletico, giving Athletico a competitive advantage over competitors who do not have access to or use of the Confidential Information. Client agrees not disseminate the Confidential Information to any person and to only use the Confidential Information to fulfill its obligations under the SOW or as required by law, rule, regulation or court order; provided that Client shall give Athletico prior notice of any such requirement and shall cooperate with Athletico in obtaining a protective order or such similar protection as Athletico may reasonably deem appropriate.
- 6. Compliance with Law; Patient Information.** The Parties shall comply with all applicable laws, including, without limitation, state and federal laws and regulations governing the release and handling of patient medical records. Any and all patient records and charts (“Health Records”) produced as a result of the SOW shall be and remain the property of Athletico. The Parties acknowledge and agree that the medical records may include Protected Health Information (“PHI”) creating obligations on both Parties under Title II of the Health Insurance Portability and Accountability Act of 1996, as amended and the regulations issued and effective thereunder (collectively, “HIPAA”). Each Party agrees to comply with HIPAA. Any and all information that is not a Health Record produced as a result of the SOW, such as employee records, shall be and remain the property of Client.
- 7. Indemnification.** Each Party shall indemnify, defend, and hold harmless the other Party, its affiliates and its and their directors, officers, employees, and agents (collectively, the “Indemnified Parties”) from and against any and all liability, suits, claims, losses, damages, costs and expenses, including, without limitation, reasonable attorney’s fees and court costs (collectively “Losses”), to the extent caused by, resulting from or related to (i) any grossly negligent or reckless act or omission, or intentional misconduct, of such Party in performing the SOW and (ii) any breach of the SOW by such Party. In addition, Client shall indemnify, defend and hold harmless, Athletico, and its Indemnified Parties from all Losses to the extent caused by, resulting from or related to any event occurring on any premises other than an Athletico clinic where the Services are being provided, except to the extent directly resulting from the acts or omissions of Athletico. In the instance that the SOW
- includes Post Offer Pre-Employment testing and Client designs the testing protocols, Athletico shall not have any responsibility or liability for the design or implementation of such testing protocols. Further, Client shall indemnify, defend, and hold harmless Athletico from all liability, claims, losses, or costs arising out of, or related to, the testing protocols or implementation thereof to the extent done in accordance with Client’s instructions. In no event shall Athletico be liable hereunder (whether in action in negligence, contract or tort or otherwise) for any indirect, incidental, special, consequential or punitive damages. Athletico’s aggregate liability related to the SOW shall not exceed the aggregate fees paid to Athletico by Client under the applicable SOW. Athletico shall not be required to perform any Service on an individual participant unless such participant executes a consent and liability waiver in form and substance acceptable to Athletico. If the individual is a minor, the waiver must also be executed by such participant’s parent or legal guardian.
- 8. Notices.** All notices and other communications given or made pursuant to the SOW shall be in writing and shall be deemed effectively given: (a) upon personal delivery to the Party to be notified; or (b) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt sent to the address set forth below such Party’s signature on the signature page to the SOW.
- 9. Governing Law/Arbitration.** The SOW shall be governed by the laws of the State of Illinois (excluding its choice of law principles). The Parties agree that any disputes shall be settled by binding arbitration with a single arbitrator agreed to by the Parties (or selected by the American Arbitration Association if the Parties cannot agree) and held in DuPage County, Illinois. Arbitration will be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association, the Federal Rules of Evidence and the Federal Rules of Civil Procedure, and judgment upon the award rendered may be entered in any court having jurisdiction. The prevailing Party shall be entitled to recover its reasonable costs and attorneys’ fees (including collection costs).
- 10. Change in Law.** If either Party determines that the SOW would violate any applicable law, rule or regulation, or that there is a change in the law that has had, or is reasonably likely to have, a material adverse effect on such Party’s rights or obligations under the SOW, the SOW shall be immediately suspended upon written notice to the other Party, and the Parties shall negotiate in good faith to resolve the issue. If the Parties are unable to agree upon a resolution within thirty (30) days, either Party may terminate the SOW upon notice to the other Party.
- 11. Inability to Perform.** Each Party’s obligations under the SOW shall immediately cease if such Party is unable to perform its obligations by reason of physical disaster, governmental acts, labor difficulties, strikes or other circumstances beyond the control of such Party, but such obligations shall resume when such Party is no longer unable to perform.
- 12. Limited License.** To the extent that any Service involves the production and/or internal distribution of any flyer, poster or other display (“Signage”) that includes any logo, trademark, trade name or other intellectual property of Athletico or any of its affiliates (the “Athletico IP”), Athletico hereby grants to Client a limited, non-exclusive right to use the Athletico IP solely in connection with the internal distribution of the Signage and for no other purpose. Client may not develop or distribute (other than in connection with the internal distribution of the Signage), market, sell or otherwise commercially exploit the Athletico IP in any manner.
- 13. Authority to Execute.** The person executing the SOW on behalf of a Party has full authority to execute the SOW on behalf of such Party and the SOW is binding upon such Party in accordance with its terms.
- 14. Miscellaneous.** If any provision of the SOW is held to be invalid as applied to any fact or circumstance, it shall not affect the remaining provisions or the same provision as applied to any other fact or circumstance. The SOW may be executed in multiple counterparts, and by facsimile, portable document format (.pdf) or other electronic means, each of which shall be deemed to be an original and all of which together shall constitute one and the same agreement. The SOW, including these terms and conditions, contains the entire agreement between the Parties and supersedes any and all other agreements between the Parties, either oral or in writing, with respect to the subject matter of this SOW. No provision of this SOW may be amended or modified, except in writing duly signed and acknowledged by each Party. Client may not assign the SOW without Athletico’s prior written consent. No waiver of any provision hereon shall be effective unless expressly made in writing and executed by the Party making the waiver. Nothing in the SOW is intended to, or shall be construed to, constitute or establish an agency, partnership, joint venture, franchise or fiduciary relationship between the Parties.