

SOFTWARE AS A SERVICE AGREEMENT

BY SIGNING AT THE END OF THIS SOFTWARE AS A SERVICE LICENSE (THE “AGREEMENT”), OR BY SIGNING YOUR MUSCLESOUND CONTRACT, YOU (“SUBSCRIBER”) AGREE TO BE BOUND BY THE TERMS CONTAINED HEREIN AND TO ENTER INTO THIS AGREEMENT WITH BY AND BETWEEN MUSCLESOUND, LLC AND/OR MUSCLESOUND, INC., (“MUSCLESOUND”) AS OF THE DATE SO EXECUTED.

1. LICENSE GRANT.

1.1. By MuscleSound. MuscleSound hereby grants to Subscriber a nonexclusive, nontransferable (except as provided in section 9.2), non-assignable (except as provided in section 9.2) right and license to access and use the software as a service platform provided by MuscleSound as identified in Exhibit A (the “Platform”), including the software applications, Internet user interface (“Site”), and mobile software application (“App”) (collectively, the “Service”). The Service shall provide the functions set forth on any printed and electronic material provided to Subscriber by MuscleSound (collectively, the “Documentation”). In the event of a conflict between this Agreement and any Documentation, the terms of this Agreement shall control.

1.2. By Subscriber. Subscriber hereby grants to MuscleSound: (a) a limited, revocable, non-transferable, royalty-free license, to reproduce, translate, encode,

publish, use, and distribute personal health information (“PHI”) as defined in the Health Insurance Portability and Accountability Act (“HIPAA”) or personally identifiable information (“PII”) provided by Subscriber to MuscleSound via the Platform for each patient, athlete, client, or customer of Subscriber (“Subject”), *provided, however*, that all PHI shall be de-identified by Subscriber prior to provision to MuscleSound in accordance with the U.S. Department of Health & Human Services’ “*Guidance Regarding Methods for De-identification of Protected Health Information in Accordance with the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule*” (the “De-identification Rule”) and the identification of each Subject shall be replaced by Subscriber with a non-personally identifiable identifier, such as a health record number (“Alt ID”). Notwithstanding the foregoing, the De-Identification Rule only applies to PHI as defined by HIPAA and not to PII that is provided by a Subscriber not subject to HIPAA. For reference, PII and de-identified PHI are referred to as “Subscriber Content” in this Agreement.

1.3 MuscleSound Data. For the purposes of this Agreement, “MuscleSound Data” means all data and information collected by MuscleSound as a result of and in connection with Subscriber’s use of the Platform other than Subscriber Content and shall constitute the sole and exclusive property of MuscleSound.

1.4 Restrictions. Subscriber acknowledges and agrees that: (a) Subscriber will not: (i) access, use, copy, or distribute the Platform or any arrangement, look and feel, content, layout, functionality, or feature of the Service (“MuscleSound Content”) except as expressly allowed or in a manner that exceeds or violates any limitation set forth in this Agreement or any applicable Schedule; (ii) reverse engineer, decompile, disassemble, or otherwise attempt to derive the Service, or any portion thereof; (iii) use or allow the use of the Service for rental or in the operation of a service bureau or time-sharing arrangement, hosting or ASP model; (iv) remove or obscure any copyright, disclaimer, warning notice, or proprietary rights notice on any copy of the Documentation or which is displayed by the Service; (v) use the Service, MuscleSound Data, or MuscleSound Content the purpose of benchmarking, reviewing, measuring, or testing the Service; or (vi) interfere with, disrupt, alter, translate, or modify the Platform, or create an undue burden on the Platform or networks or services connected to the Platform; and (b) Subscriber shall be solely responsible for: (i) reporting to the Food and Drug Administration (“FDA”) any serious unexpected experiences or events associated with the use of the Software, whether the event was expected or not, by contacting the FDA at 1-800-FDA-1088; and (ii) providing any medical treatments or analytical dashboards that Subscriber has a legal, ethical, or business obligation to provide to its Subjects and maintaining any required communication between Subscriber and its Subjects; and (c) the Platform is intended for use by Subscriber and its Users only in conjunction with Subscriber’s medical knowledge and training and is not intended to replace any medical diagnosis or treatment.

1.5 SLA. The Service shall be provided by

MuscleSound in accordance with the terms of the Service Level Agreement (“SLA”) attached as Exhibit B, as such SLA may be updated by the parties from time to time upon mutual written agreement. In the event that the Service fails to perform in accordance with the applicable SLA, Subscriber shall be entitled to recover the applicable amount of service level credits specified in the SLA (“Service Level Credits”) as its sole and exclusive remedy for such failure.

2. OWNERSHIP.

2.1. Ownership. As between the parties, MuscleSound shall retain all title, copyright and IP Rights in the Service the MuscleSound Data, and all MuscleSound Content, and all Improvements thereto and Subscriber does not acquire any right, express or implied, in the Platform, other than those specified in this Agreement. For purposes of this Agreement, “IP Rights” means all forms of intellectual property rights and protections throughout the world, including, but not limited to, any (a) patents (including any patent applications, together with all reissuances, continuations, continuations-in-part, revisions, extensions and reexaminations thereof), (b) copyrights, (c) Internet domain names, trademarks, service marks, and trade dress, together with all goodwill associated therewith, (d) trade secrets, (e) rights in databases and designs (ornamental or otherwise), (f) moral rights, rights of privacy, rights of publicity and similar rights, (g) right to copy, distribute, use, and analyze any MuscleSound Data, and (h) and any other proprietary rights and protections, whether currently existing or hereafter developed or acquired, whether published or unpublished, arising under statutory law, common law, or by contract, and whether or not perfected, including all applications, disclosures and registrations with respect thereto. For clarity, MuscleSound

shall be permitted to license, copy, distribute, reproduce, sublicense, exploit, and otherwise commercialize all MuscleSound Data and Content without restrictions or limitations.

2.3 Upgrades. MuscleSound will be permitted at any time during the Term to update, upgrade, and improve the Platform (including by providing updates and improvements to the Software) (each an “Upgrade”); *provided, however*, that MuscleSound shall not implement any Upgrade that would result in (a) the Platform not performing in accordance with the Documentation, (b) any loss of material functionality, as determined by MuscleSound in its reasonable discretion, or (c) any material performance degradation of the Platform that would result in MuscleSound failing to comply with the SLA.

2.4. Ownership of Subscriber Content. Subscriber owns all right, title, and interest in and to the Subscriber Content, including all IP Rights therein, irrespective of whether such Subscriber Content is stored via the Platform or in any database created using the Platform.

3. FEES

3.1 Consideration. In consideration of the license provided herein, Subscriber agrees to pay the fees set forth in the fee schedule described in Your MuscleSound Contract entered into between Subscriber and MuscleSound, in U.S. Dollars as specified in the Platform on a monthly basis starting at the time Subscriber clicks accept at the end of this Agreement (the “Fee”). Fee will be automatically billed by MuscleSound and paid by Subscriber in accordance with the Fee details on the first of each subsequent month until termination.

4. WARRANTIES; DISCLAIMER.

4.1 Warranties. MuscleSound represents and warrants that: (a) MuscleSound has the

power and authority to enter into and perform its obligations under this Agreement and the performance of its obligations hereunder do not and will not conflict with or result in a breach of any other agreement by which it may be bound; (b) MuscleSound owns and/or has all proprietary and other intellectual property rights necessary to provide the Platform free from claims of third parties; and (c) MuscleSound’s performance hereunder shall comply with all laws, rules, and regulations applicable to MuscleSound in the performance of its obligations under this Agreement.

4.2 Disclaimer. EXCEPT AS EXPRESSLY INDICATED IN THIS AGREEMENT AND SUBJECT TO ANY STATUTORY WARRANTIES WHICH CANNOT BE EXCLUDED, MUSCLESOUND MAKES NO OTHER EXPRESS OR IMPLIED WARRANTIES WITH RESPECT TO THE SERVICE, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND OR FITNESS FOR A PARTICULAR PURPOSE. EXCEPT AS EXPRESSLY INDICATED IN THIS AGREEMENT, MUSCLESOUND DOES NOT WARRANT THAT THE OPERATION OF THE SERVICE WILL MEET SUBSCRIBER’S SPECIFIC REQUIREMENTS. **THE SERVICE, INCLUDING THE APP, PLATFORM AND ALL MUSCLESOUND CONTENT IS PROVIDED FOR INFORMATIONAL USE ONLY AND IS NOT INTENDED TO REPLACE ANY MEDICAL TREATMENTS OR ANALYTICAL DASHBOARDS THAT SUBSCRIBER HAS A LEGAL, ETHICAL, OR BUSINESS OBLIGATION TO USE OR PRODUCE. FURTHER, SUBSCRIBER EXPRESSLY RELEASES MUSCLESOUND FROM ANY AND ALL LIABILITY OR CLAIMS RELATED TO UNAVAILABILITY OF THE PLATFORM, INCLUDING**

WITHOUT LIMITATION, ANY PERSONAL INJURY, DEATH, OR DAMAGE TO PROPERTY. PROVIDER REMAINS SOLELY LIABLE AND RESPONSIBLE FOR MAINTAINING ANY REQUIRED COMMUNICATION BETWEEN A SUBJECT AND SUBSCRIBER AND ACKNOWLEDGES THAT THE SERVICE IS NOT A REPLACEMENT FOR MEDICAL TREATMENT. PROVIDER AND EACH USER REMAINS SOLELY LIABLE FOR DETERMINING THE APPROPRIATENESS OF THE PLATFORM FOR USE IN CONNECTION WITH A SUBJECT.

5. CONFIDENTIAL INFORMATION.

5.1. Definition. As used in this Agreement, the term “Confidential Information” shall mean any and all information prepared or delivered to the receiving party by the disclosing party or its representatives (including information or data received by the disclosing party from a third party and as to which the disclosing party has confidentiality obligations), that (a) is marked or designated by the disclosing party as “confidential” or “proprietary”; (b) is disclosed orally or visually provided that such information is identified at the time of such disclosure as proprietary or confidential, and that within thirty (30) days thereafter a written summary of such oral and visual disclosure bearing the aforesaid type of label or legend, is provided to the receiving party; or (c) is known to the receiving party, or should be known to a reasonable person given the facts and circumstances of the disclosure, as being treated as confidential or proprietary by the disclosing party. Notwithstanding the foregoing, Subscriber’s Confidential Information shall always include, without limitation, the Subscriber Content and all

MuscleSound Data generated in connection with Subscriber’s and its users’ use of the Platform. Confidential Information shall not include information (a) which is published or available to the public other than by breach of this Agreement; (b) otherwise rightfully received by the non-disclosing party from a third party without obligations of confidentiality; (c) independently developed by the non-disclosing party’s employees having no access to the disclosed information; (d) known to the non-disclosing party before receiving the Confidential Information from the disclosing party under this or any prior agreement of the parties; or (e) disclosed by the disclosing party to a third party without restrictions.

5.2. Obligations. Each party acknowledges it may have access to Confidential Information of the other party. Each party agrees that it shall use the other party’s Confidential Information solely as necessary to exercise its rights or carry out its obligations pursuant to this Agreement or as otherwise permitted herein. Each party agrees to keep the Confidential Information of the other party strictly confidential and to take all reasonable precautions, at least to the same degree of care and precautions the recipient would take to protect the confidential nature of its own information, not to disclose copy, distribute or otherwise disseminate the Confidential Information to any third parties. The receiving party may disclose the Confidential Information only to those employees, agents and subcontractors (collectively, “Representatives”) who have a legitimate business reason to have such access for purposes of performing its obligations under this Agreement, and are subject to the requirement to abide by a non-disclosure agreement substantially similar to this Agreement’s non-disclosure obligations. Notwithstanding the foregoing, third parties

shall exclude any individuals employed by, or acting on behalf or under the direction of, a direct competitor of either party. The receiving party shall remain liable for any unauthorized use or disclosure of the disclosing party's Confidential Information by a Representative. Upon the termination, cancellation or expiration of this Agreement for any reason or upon the reasonable request of Subscriber, all Confidential Information, together with any copies that may be authorized herein, shall be returned to Subscriber or, if requested by Subscriber, certified destroyed by MuscleSound.

5.3. Data Security. MuscleSound shall maintain appropriate technical, procedural, physical, and other safeguards as are necessary for the protection, security, and confidentiality of Subscriber's Confidential Information and shall require that its service providers maintain such safeguards.

6. INDEMNIFICATION.

6.1. By MuscleSound. MuscleSound will indemnify, defend and hold Subscriber harmless from and against all claims, actions, expenses, losses, and liabilities arising or relating to any claim that the Platform infringes any third party's IP Right. MuscleSound will not be liable for a claim of infringement, to the extent based on (a) modification(s) made to the Platform by Subscriber; (b) use or combination of the Platform with non-MuscleSound programs; or (c) for which Subscriber is contractually obligated to indemnify MuscleSound pursuant to Section 6.2.

6.2. By Subscriber. Subscriber shall indemnify, defend and hold harmless MuscleSound from and against any and all claims, suits, actions, or other proceedings for any loss or damage (including reasonable attorney's fees) brought by third parties

against MuscleSound or its directors, officer or employees to the extent based on or arising from: (a) the negligence or willful misconduct of Subscriber or its personnel; (b) any claim that Subscriber failed to de-identify any Health record in compliance with the De-Identification Rule prior to providing to MuscleSound; (c) any claim that the Subscriber Content infringes or constitutes a wrongful use of any third party's IP Rights, or any right of privacy, except to the extent that such claim results from any unauthorized deletions, additions, or alterations to, or any unauthorized use of the Subscriber Content made by MuscleSound or any other person controlled by MuscleSound; or (d) any provision of PHI by Subscriber to MuscleSound other than in connection with a valid BAA executed by both parties in accordance with Section 1.3.

6.3. Procedure. The indemnified party shall give prompt written notice to the indemnifying party of any claim, demand, action, or proceeding for which indemnity is sought. The indemnified party shall cooperate in the defense or settlement of any such claim, demand, or action, at the expense of the indemnifying party. Notwithstanding the foregoing, the failure of the indemnified party to give prompt notice or to timely mitigate shall not affect the indemnified party's rights to indemnification, except (and then only to the extent) that the indemnifying party's ability to provide indemnification is impeded or frustrated or losses would have been avoided by prompt notice or mitigation. The indemnifying party shall obtain the prior written agreement of the indemnified party to any non-monetary settlement or proposal of settlement.

7. LIMITATION OF LIABILITY. EXCEPT FOR A PARTY'S OBLIGATIONS OF INDEMNIFICATION OR

CONFIDENTIALITY, OR A BREACH OF MUSCLESOUND'S INTELLECTUAL PROPERTY RIGHTS, NEITHER PARTY WILL BE LIABLE FOR ANY INDIRECT, SPECIAL, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL DAMAGES, EVEN IF SUCH PARTY IS INFORMED OF THEIR POSSIBILITY (SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE EXCLUSION OR LIMITATION MAY NOT APPLY). PLEASE SEE OUR SERVICE LEVEL AGREEMENT FOR ADDITIONAL DETAILS ON DATA MANAGEMENT. NOTWITHSTANDING THE FOREGOING, MUSCLESOUND'S TOTAL LIABILITY WITH RESPECT TO A DATA BREACH SHALL BE LIMITED TO THE AMOUNTS PAID BY SUBSCRIBER TO MUSCLESOUND DURING THE LAST TWELVE (12) MONTHS OF THIS AGREEMENT PRIOR TO THE DATE OF THE DATA BREACH.

8. TERM AND TERMINATION.

8.1. Term. This Agreement shall be effective upon the Subscriber clicking accept or by signing Your MuscleSound Contract and, unless terminated earlier as set forth herein, shall remain in full force and effect. Either party can provide the other with notice of non-renewal at least thirty (30) days prior to the annual renewal date of the then-current Term.

8.2. Termination

a. For Breach. Either party will have the right to terminate this Agreement for breach of any material term or condition of this Agreement and failure to cure such breach within thirty (30) days after written notice.

b. For Insolvency. Either party may terminate this Agreement upon written notice

if: (a) the other party becomes insolvent, or voluntary or involuntary proceedings are instituted by or against such other party under any federal, state, or foreign bankruptcy or insolvency laws, and, in the case of involuntary proceedings commenced against such party, such proceedings are not terminated within sixty (60) days; (b) the other party makes an assignment for the benefit of creditors; (c) the other party ceases to operate as a going concern; or (d) a receiver is appointed for such other party.

8.3. Suspension. In the event that any undisputed Fees remain unpaid sixty (60) days after the applicable due date, MuscleSound reserves the right to suspend Subscriber's access to or use of the Platform until the Fees have been paid.

9. MISCELLANEOUS.

9.1. Notice. All notices, including notices of address change, required to be sent hereunder shall be in writing as specified in Section 9.4 and shall be deemed to have been given with confirmed receipt.

9.2 Arbitration; No Class Action

SUBSCRIBER AGREES THAT BY ENTERING INTO THIS AGREEMENT, SUBSCRIBER IS WAIVING THE RIGHT TO TRIAL BY JURY OR TO PARTICIPATE IN A CLASS ACTION. SUBSCRIBER AGREES TO BRING CLAIMS AGAINST MUSCLESOUND ONLY IN ITS INDIVIDUAL CAPACITY AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. ANY ARBITRATION WILL TAKE PLACE ON AN INDIVIDUAL BASIS; CLASS ARBITRATIONS AND CLASS ACTIONS ARE NOT PERMITTED. All controversies, disputes, demands, counts, claims, or causes of action between Subscriber and MuscleSound

arising out of, under, or related to this Agreement or our privacy practices (including any action MuscleSound takes or authorizes with respect to information about or provided by Subscriber) shall be settled exclusively through binding arbitration. Arbitration shall be subject to the Federal Arbitration Act and not any state arbitration law. The arbitration shall be conducted in Denver, Colorado before one commercial arbitrator with substantial experience in resolving commercial contract disputes from the American Arbitration Association (“AAA”). As modified by this Agreement, and unless agreed upon by the parties in writing, the arbitration will be governed by the AAA’s Commercial Arbitration Rules and, if the arbitrator deems them applicable, the Supplementary Procedures for Consumer Related Disputes (collectively “Rules and Procedures”). Subscriber and MuscleSound must abide by the following rules: (a) for any claim that could otherwise be brought in small claims court, the arbitration shall be conducted solely based on written submissions and, if the arbitrator deems it appropriate, a telephonic hearing and otherwise in person in Denver, Colorado; (b) if the claim exceeds what can be recovered in a small claims court, the arbitration shall be conducted solely based on written submissions or a telephonic hearing, unless the arbitrator deems a face-to-face hearing is appropriate, in which case one should be held at a location agreed to by Subscriber and MuscleSound, and if the parties cannot agree on a location for the hearing, the arbitrator will determine a location for the proceedings which is reasonably convenient to both parties with due consideration of their ability to travel and other pertinent circumstances; (c) the arbitrator’s ruling is binding and not merely advisory; (d) any claims brought by Subscriber or MuscleSound must be brought in the parties’ individual

capacity, and not as a plaintiff or class member in any purported class or representative proceeding; (e) the arbitrator may not consolidate more than one person’s claims, and may not otherwise preside over any form of a representative or class proceeding, (f) in the event that Subscriber is able to demonstrate that the costs of arbitration will be prohibitive as compared to costs of litigation, MuscleSound will pay as much of Subscriber’s hearing fees in connection with the arbitration as the arbitrator deems necessary to prevent the arbitration from being cost-prohibitive as compared to the cost of litigation, (g) MuscleSound also reserves the right in its sole and exclusive discretion to assume responsibility for all of the costs of the arbitration; (h) the arbitrator shall honor claims of privilege and privacy recognized at law; (i) a decision by the arbitrator (including any finding of fact and/or conclusion of law) against either Subscriber or MuscleSound shall be confidential unless otherwise required to be disclosed by law or by any administrative body and may not be collaterally used against either of them in existing or subsequent litigation or arbitration involving any other person/MuscleSound customer; and (j) each side pays its own attorneys’ fees and expenses unless there is a statutory provision that requires the prevailing party to be paid its fees’ and litigation expenses. Notwithstanding the foregoing, either Subscriber or MuscleSound may bring an individual action in small claims court. Additionally, notwithstanding this arbitration provision, either party may seek emergency equitable relief before such courts in order to maintain the status quo pending the arbitrator’s ruling, and hereby agree to submit to the personal jurisdiction of such courts. A request for interim measures shall not be deemed a waiver of the right to arbitrate. With the exception of subparts (d) and (e) above (prohibiting arbitration on a class or collective

basis), if any part of this arbitration provision is deemed to be invalid, unenforceable or illegal, or otherwise conflicts with the Rules and Procedures, then the balance of this arbitration provision shall remain in effect and shall be construed in accordance with its terms as if the invalid, unenforceable, illegal or conflicting provision were not contained herein. For more information on AAA, its Rules and Procedures, and how to file an arbitration claim, Subscriber may call AAA at 800-778-7879 or visit the AAA website at <http://www.adr.org>.

9.3 General. The interpretation, validity and enforcement of this Agreement, and all legal actions brought under or in connection with the subject matter of this Agreement, shall be governed by the laws of the State of Colorado (except that any conflicts-of-law principles of such state that would result in the application of the law of another jurisdiction shall be disregarded). Any legal action brought under or in connection with the subject matter of this Agreement shall be brought only in the courts located in Denver, Colorado. Each party hereby completely and irrevocably submits to the exclusive jurisdiction of these courts and agrees not to commence any legal action under or in connection with the subject matter of this Agreement in any other court or forum. Each party waives any objection to the laying of the venue of any legal action brought under or in connection with the subject matter of this Agreement in the Federal or state courts sitting in Denver, Colorado and agrees not to plead or claim in such courts that any such action has been brought in an inconvenient forum. If any provision of this Agreement is ruled invalid, such invalidity shall not affect the validity of the remaining portions of this Agreement. All rights and remedies conferred under this

Agreement or by any other instrument or law shall be cumulative and may be exercised singularly or concurrently. Failure by either party to enforce any contract term shall not be deemed a waiver of future enforcement of that or any other term. Neither party shall assign this Agreement or any part thereof without the prior written consent of the other party, which will not be unreasonably withheld; *provided*, that either party may assign this Agreement at no additional cost, in whole or part, without consent, in connection with the transfer or sale of a portion of, or substantially its entire business to which this Agreement pertains, in the event of a divestiture of part of its business, reorganization, or its merger or consolidation with another company. The successor entity or divested entity, as applicable, will operate under the terms of this Agreement. Nothing contained in this Agreement is intended to constitute Subscriber and MuscleSound as partners or joint ventures, or the employees, agents, or representatives of one another. MuscleSound is acting solely as an independent contractor and not as an agent of Subscriber. Neither party has the authority to bind the other to any third person or otherwise to act in any way as the representative of the other unless otherwise expressly agreed to in writing signed by both parties. Nothing contained in this Agreement is intended to give rise to a partnership or joint venture between the parties or to impose upon the parties any of the duties or responsibilities of partners or joint venturers. Except as so authorized, MuscleSound agrees to indicate to any third party vendor or customer who is or may be doing business with Subscriber, as appropriate, that MuscleSound has no authority to bind Subscriber. Persons furnished by MuscleSound shall be solely the employees or agents of MuscleSound and shall be under the sole and exclusive direction and control of MuscleSound. MuscleSound agrees that it

shall bear the same degree of responsibility and liability for any actions or inactions of its subcontractors with respect to this Agreement that it would bear if they were employees and shall obligate such subcontractors to comply with all relevant obligations and requirements imposed on MuscleSound hereunder. Subscriber and MuscleSound understand and agree, for purposes of federal and state law, that MuscleSound will not be treated as an employee with respect to MuscleSound Platform to Subscriber as set forth herein; rather, MuscleSound is to be treated as an independent contractor. Neither party will be held responsible for any delay or failure in performance of any part of this Agreement to the extent that such delay or failure is caused by fire, flood, explosion, war, embargo, government requirement, civil or military authorities, Act of God or by the public enemy, acts or omissions of carriers, or other causes beyond the reasonable control of MuscleSound or Subscriber. The following provisions shall survive termination of this Agreement: 2, 3, 4, 5, 6, and 7. This Agreement (including any exhibits and Consent Forms) constitutes the entire Agreement between Subscriber and MuscleSound relating to the subject matter of this Agreement and supersedes all prior or contemporaneous oral or written communications. This Agreement may only be

modified in writing, signed by a duly authorized representative of the parties.

9.4 Notices. All Notices in this Agreement will be considered sent if delivered by email or United States Mail

To MuscleSound:

Andrew Jackson
President & CEO
501 South Cherry Street
Suite 1080
Glendale, Colorado 80246
Email: andrew.jackson@musclesound.com

AND with a copy to:

Jamie Zynger
Controller
501 South Cherry Street
Suite 1080
Glendale, Colorado 80246
Email: jamie.zynger@musclesound.com

To Subscriber:

As provided in Your MuscleSound Contract

Subscriber: (Sign here or on Your MuscleSound Contract)

By: _____

Print Name: _____

Title: _____

Exhibit A
The Service

1. Platform

The following Services contemplated by this Agreement:

- a. non-invasive measurement of muscle health and associated assessments and method and system for the non-invasive determination of human body fat in human muscular tissue in Subjects as described in Your MuscleSound Contract;
- b. in the geographic region (“Licensed Field of Use and Licensed Territory”) specified in Your MuscleSound Contract.

Exhibit B
Service level Agreement

Maintenance and Support; Application Downtime

MuscleSound shall be responsible for the maintenance and support of the Service.

The Service shall be available to Subscriber twenty-four (24) hours a day, seven (7) days per week ninety five percent (95%) of the time, calculated on a monthly basis (“Monthly Uptime Standard”).

In the event MuscleSound fails to meet the Monthly Uptime Standard for any month, MuscleSound agrees to provide the following rebates to Subscriber on Subscriber’s next monthly invoice (each a “Service Level Credit”) in the amount below that relates to the length of the downtime occurrence.

Monthly Uptime Standard	Credit
95%-100%	No credit
90-94.99%	10% of Monthly Fee for Services
85-89.99%	25% of Monthly Fee for Services
<84.9%	40% of Monthly Fee for Services

Exceptions

Subscriber shall not receive Service Level Credits to the extent such are caused or contributed by any of the following reasons

- Any latency or downtime due to Subscriber’s acts or omissions, excepting ordinary use of the Services or such entities’ following of the instructions or recommendations of MuscleSound or its representatives;
- Scheduled maintenance, unless such maintenance exceeds an aggregate of three (3) hours per month; or
- Any Force Majeure Event.