

POSITIVE DEVELOPMENT END USER TERMS OF USE

Version 1.0

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THESE TERMS OF USE APPLY TO END USERS OF THE WEBSITE, APP, OR SERVICES. THESE TERMS OF USE DO NOT APPLY TO CLINICIANS.

Welcome to the Positive Development App available at www.positivedevelopment.app (the “**App**”) and website available at www.positivedevelopment.com (“**Website**”), which are owned and operated by Positive Development, Inc. (“**Positive Development**”, “**we**”, or “**us**”). These terms of use agreement (the “**Terms of Use**”) sets forth the legally binding terms and conditions for your use of the App, Website, and any services provided through the App or Website as set forth below (each a “**Service**” and collectively, the “**Services**”). PLEASE READ THESE TERMS OF USE CAREFULLY. BY CLICKING ON THE “I ACCEPT” BUTTON, COMPLETING THE REGISTRATION PROCESS, AND/OR BY ACCESSING OR USING THE APP OR WEBSITE, YOU REPRESENT THAT (1) YOU HAVE READ, UNDERSTAND, AND AGREE TO BE BOUND BY THE TERMS OF USE, (2) YOU ARE OF LEGAL AGE TO FORM A BINDING CONTRACT WITH POSITIVE DEVELOPMENT, AND (3) YOU HAVE THE AUTHORITY TO ENTER INTO THESE TERMS OF USE PERSONALLY. THE SERVICES ARE DESIGNED FOR PARENTS, NOT CHILDREN. IF YOU ARE BETWEEN THE AGES OF 13 AND 18, YOU MUST ONLY USE THE SERVICES UNDER THE SUPERVISION OF A PARENT OR LEGAL GUARDIAN WHO IS BOUND BY THESE TERMS OF USE. THE SERVICES ARE NOT DESIGNED FOR USE BY INDIVIDUALS UNDER 13. DO NOT USE THE SERVICES IF YOU ARE UNDER 13. THE TERM “**YOU**” REFERS TO THE INDIVIDUAL IDENTIFIED AS THE USER WHEN YOU REGISTERED ON THE APP. IF YOU DO NOT AGREE TO BE BOUND BY THESE TERMS OF USE, YOU MAY NOT ACCESS OR USE THIS APP OR THE SERVICES. THE TERM “**PATIENT**” REFERS TO YOU IF YOU ARE A PATIENT BETWEEN THE AGES OF 13 AND 18 OR REFERS TO YOUR CHILD IF THE PATIENT IS UNDER THE AGE OF 13.

Your use of, and participation in, certain Services may be subject to additional terms (“**Supplemental Terms**”) and such Supplemental Terms will either be listed in the Terms of Use or will be presented to you for your acceptance when you sign up to use the supplemental Service. If the Terms of Use of are inconsistent with the Supplemental Terms, the Supplemental Terms shall control with respect to such Service. The Terms of Use and any applicable Supplemental Terms are referred to herein as the “**Terms.**”

THESE TERMS OF USE REQUIRE THE USE OF ARBITRATION (SECTION 13 BELOW) ON AN INDIVIDUAL BASIS TO RESOLVE DISPUTES, RATHER THAN JURY TRIALS OR CLASS ACTIONS, AND ALSO LIMIT THE REMEDIES AVAILABLE TO YOU IN THE EVENT OF A DISPUTE.

PLEASE NOTE THAT THE TERMS ARE SUBJECT TO CHANGE BY POSITIVE DEVELOPMENT IN ITS SOLE DISCRETION AT ANY TIME. When changes are made, we will make a new copy of the Terms of Use available within the App. We will also update the “Last Updated” date at the top of these Terms of Use. If we make any material changes, and you have registered with us to create an Account (as defined in Section 1 below) we will also send an e-mail to you at the last e-mail address you provided to us pursuant to the Terms. Any changes to the Terms will be effective immediately for new users of the App or Website and will be effective thirty (30) days after posting notice of such changes on the App or Website for existing users, provided that any material changes shall be effective for users who have an Account with us upon the earlier of thirty (30) days after posting notice of such changes on the App or Website or thirty (30) days after dispatch of an e-mail notice of such changes to registered users. Positive Development may require you to provide consent to the updated Terms in a specified manner before further use of the App, Website, and/ or the Services is permitted. If you do not agree to any change(s) after receiving a notice of such change(s), you shall stop using the Services.

Otherwise, your continued use of Services constitutes your acceptance of such change(s). PLEASE REGULARLY CHECK THE APP AND WEBSITE TO VIEW THE THEN-CURRENT TERMS.

1. **Our Services.** Our App, and the related Services, are designed to allow you to schedule therapy sessions with occupational therapists, physical therapists, mental health therapists, speech therapists and related rehabilitation therapy providers (collectively, “**Clinicians**”) on your behalf or on behalf of your child; access and review therapy sessions (or portions of therapy sessions) between you or your child, as the Patient, on the one hand, and the Patient’s Clinician(s), on the other hand, which have been recorded and uploaded by Clinicians (“**Videotaped Sessions**”); and access and review therapeutic videos, content, and other resources made available through the App or Website (“**Video Content**”).

1.1 **Your Consent.** You consent to our access to and use of Videotaped Sessions for the purpose of providing our Services to you. You understand and agree that we may request additional documentation and consents from you related to our access and use of your Videotaped Sessions or Video Content, and that if we do not receive such documentation and consents, we may be unable to provide you the Services. If you opt-in to “**Additional Sharing**” (as described in Section 4.4 below), you acknowledge and agree that you grant us additional rights to use Videotaped Sessions in accordance with Section 4.4.

1.2 **Children. Consistent with the federal Children's Online Privacy Protection Act of 1998 (COPPA), Positive Development will never knowingly request personally identifiable information from anyone under the age of thirteen (13). Any individual who accesses or uses the Services and provides personal information to Positive Development through the Services represents that he or she is thirteen (13) years of age or older.**

1.3 **Services Not Intended as Medical Advice.** POSITIVE DEVELOPMENT ACTS SOLELY AS A VENUE TO FACILITATE YOUR ACCESS TO VIDEOTAPED SESSIONS AND VIDEO CONTENT. POSITIVE DEVELOPMENT IS NOT A MEDICAL PROFESSIONAL OR THERAPY PROVIDER, AND WE DO NOT PROVIDE MEDICAL SERVICES, RENDER MEDICAL ADVICE OF ANY KIND, OR MAKE CLINICAL, MEDICAL, OR OTHER PROFESSIONAL DECISIONS. YOUR USE OF THE SERVICES DOES NOT CREATE A DOCTOR-PATIENT RELATIONSHIP BETWEEN YOU AND POSITIVE DEVELOPMENT. POSITIVE DEVELOPMENT DOES NOT ENDORSE, GUARANTEE, OR ASSUME RESPONSIBILITY FOR THE ACCURACY, EFFICACY, OR VERACITY OF ANY INFORMATION OR RECOMMENDATION RECEIVED BY A CLINICIAN THROUGH THE SERVICES.

2. **ACCOUNT.**

2.1. **Account Registration.** In order to gain access to certain features or functionality of the App, you must be invited to join by a Clinician who has subscribed to the Positive Development clinician portal. In order to schedule a Patient’s appointment with a Clinician or access Videotaped Sessions and Video Content, you will be required to set up an “**Account**” with us. When you set up an Account, you must provide us with your email address and select a password (collectively, the “**Account Credentials**”), and such other information we request. We reserve the right to reject your Account Credentials and deny you access to the App or Website at any time, for any reason, in our sole discretion. You may not transfer or share your Account Credentials with any third party, and you are solely responsible for maintaining the confidentiality of your Account Credentials. You acknowledge and agree that we rely on Account Credentials to know whether users accessing the App or Website are authorized to do so. If someone accesses our App or Website using Account Credentials that we have issued to you, we will rely on those Account Credentials and will assume that it is really you or your representative who is accessing the App or Website. You are solely responsible for any and all use of your Account and all activities that occur under or in connection with your Account Credentials. You agree to be responsible for any act or omission of any users that access the App or Website under your Account that, if undertaken by you, would be deemed a violation of these Terms, and that such act or omission shall be deemed a violation of these Terms by you. Please notify us immediately if you become aware that your Account is being used without authorization. You agree not to register for more than one Account, register for an Account on behalf of an individual other than yourself, or register for an Account on behalf of any

group or entity. Your Account Credentials will be treated in accordance with our Privacy Policy, which is located at <https://static.positivedevelopment.com/PrivacyPolicy.pdf>.

2.2. Third-Party Accounts. If you sign-in and access the Services through a third-party platform (e.g., a social networking site or e-mail provider), you may link your Account with such third-party accounts (“**Third-Party Accounts**”). You represent that you are entitled to grant Positive Development access to your Third-Party Account (including, but not limited to, for use for the purposes described herein) without breach by you of any of the terms and conditions that govern your use of the applicable Third-Party Account and without obligating Positive Development to pay any fees or making Positive Development subject to any usage limitations imposed by such third-party service providers. By granting Positive Development access to any Third-Party Accounts, you understand that Positive Development may access, make available and store (if applicable) any information, data, text, software, music, sound, photographs, graphics, video, messages, tags and/or other materials accessible through Services that you have provided to and stored in your Third-Party Account (“**Third-Party Account Content**”) so that it is available on and through the Services via your Account. All Third-Party Account Content shall be considered to be Your Content (as defined in Section 4.4) for all purposes of the Terms. Depending on the Third-Party Accounts you choose and subject to the privacy settings that you have set in such Third-Party Accounts, personally identifiable information that you post to your Third-Party Accounts may be available on and through your Account on the Services. Please note that if a Third-Party Account or associated service becomes unavailable or Positive Development’s access to such Third-Party Account is terminated by the third-party service provider, then Third-Party Account Content will no longer be available on and through the Services. PLEASE NOTE THAT YOUR RELATIONSHIP WITH THE THIRD-PARTY SERVICE PROVIDERS ASSOCIATED WITH YOUR THIRD-PARTY ACCOUNTS IS GOVERNED SOLELY BY YOUR AGREEMENT(S) WITH SUCH THIRD-PARTY SERVICE PROVIDERS, AND POSITIVE DEVELOPMENT DISCLAIMS ANY LIABILITY FOR PERSONALLY IDENTIFIABLE INFORMATION THAT MAY BE PROVIDED TO IT BY SUCH THIRD-PARTY SERVICE PROVIDERS IN VIOLATION OF THE PRIVACY SETTINGS THAT YOU HAVE SET IN SUCH THIRD-PARTY ACCOUNTS.

3. MODIFICATION AND TERMINATION. You agree that we, in our sole discretion, may immediately suspend or terminate your access to the App, Website, or any part of the Services at any time, for any reason, in our sole discretion. We also reserve the right, at any time, to modify the Services or to modify, suspend, or discontinue the App or Website, or any part thereof, with or without notice. You agree that we will not be liable to you or to any third party for any modification of the Services or modification, suspension, or discontinuance of the App or Website.

4. USE OF THE SERVICES AND OWNERSHIP

4.1 TECHNOLOGY. You understand and acknowledge that the software, code, proprietary methods and systems used to provide the App or Website, including the App and Website themselves (“**Our Technology**”) are: (a) copyrighted by us and/or our licensors under United States and international copyright laws; (b) subject to other intellectual property and proprietary rights and laws; and (c) owned by us or our licensors. Our Technology may not be copied, modified, reproduced, republished, posted, transmitted, sold, offered for sale, or redistributed in any way without our prior written permission and the prior written permission of our applicable licensors. You must abide by all copyright notices, information, or restrictions contained in or attached to any of Our Technology. Nothing in these Terms grants you any right to receive delivery of a copy of Our Technology or to obtain access to Our Technology except as generally and ordinarily permitted through the App, according to these Terms. Furthermore, nothing in these Terms will be deemed to grant, by implication, estoppel or otherwise, a license to Our Technology. Certain of the names, logos, and other materials displayed on the App and Website constitute trademarks, tradenames, service marks or logos (“**Marks**”) of Positive Development or other entities. You are not authorized to use any such Marks. Ownership of all such Marks and the goodwill associated therewith remains with us or those other entities. Any use of third party software provided in connection with the App and Website will be governed by such third parties’ licenses and not by these Terms.

4.2 APP AND PLATFORM LICENSE. Subject to your compliance with these Terms, Positive Development grants you (a) a limited, non-exclusive, non-transferable, non-sublicensable, revocable right to access and use the features and functionality the Website; and (b) a limited non-exclusive, non-transferable, non-sublicensable, revocable license to download, install and use a copy of the App on a single mobile device or computer that you own

or control and to run such copy of the App solely for your own personal or internal business purposes. Furthermore, with respect to any App accessed through or downloaded from the Apple App Store (an “**App Store Sourced Application**”), you will only use the App Store Sourced Application (i) on an Apple-branded product that runs the iOS (Apple’s proprietary operating system) and (ii) as permitted by the “**Usage Rules**” set forth in the Apple App Store Terms of Service. Notwithstanding the first sentence in this section, with respect to any App access through or downloaded from the Google Play store (a “**Google Play Sourced Application**”), you may have additional license rights with respect to use of the App on a shared basis within your designated family group.

4.3 FEEDBACK. You agree that submission of any ideas, suggestions, documents, and/or proposals to Positive Development regarding the App, Website, or Services through its suggestion, feedback, wiki, forum or similar pages (“**Feedback**”) is at your own risk and that Positive Development has no obligations (including without limitation obligations of confidentiality) with respect to such Feedback. You represent and warrant that you have all rights necessary to submit the Feedback. You hereby grant us a fully paid, royalty-free, perpetual, irrevocable, worldwide, non-exclusive, and fully sublicensable right and license to use, reproduce, perform, display, distribute, adapt, modify, re-format, create derivative works of, and otherwise commercially or non-commercially exploit in any manner, any and all Feedback, and to sublicense the foregoing rights, in connection with the operation and maintenance of Services and/or Positive Development’s business. Please note that, as used herein, “Feedback” does not include ideas, suggestions, documents, and/or proposals with respect to any advice or information regarding your Clinician or your Clinician’s services provided to you through the Services (“**Clinician Feedback**”). Please do not submit any such Clinician Feedback to or through the Services or otherwise to Positive Development.

4.4 CONTENT. As between Positive Development and you, all Video Content, and other content provided or made available by Positive Development through the Services (“**Our Content**”) are exclusively owned by Positive Development. You acknowledge that all information you submit through the App and Services (“**Your Content**”), is owned by you and is your sole responsibility. This means that you, and not Positive Development, are entirely responsible for Your Content, and other users of the App, and not Positive Development, are similarly responsible for all information they share through the App and Services (“**User Content**”). By submitting Your Content, you grant Positive Development a fully paid, royalty-free, non-exclusive license to use, distribute, reproduce, publicly perform, and publicly display, Your Content (in whole or in part) for purposes of providing the Services to you and Clinicians. As part of the Service, Clinicians may upload Videotaped Sessions. Positive Development will only make such Videotaped Session available in the Account(s) designated by the Clinician. Positive Development agrees to delete your Videotaped Sessions from the Services upon termination of these Terms or in the event the Patient ceases to be a patient of the Clinician unless you opt in to Additional Sharing. If you opt in to Positive Development’s use of Videotaped Sessions following the termination of these Terms or termination of the relationship between the Patient and Clinician (“**Additional Sharing**”), Positive Development shall not have any obligation to delete the Videotaped Sessions (except as may be required by applicable laws, rules, and regulations) and Positive Development may continue to use such Videotaped Sessions for its internal business purposes, including to improve its Services.

4.5 CERTAIN RESTRICTIONS. The rights granted to you in these Terms are subject to the following restrictions: (a) you shall not license, sell, rent, lease, transfer, assign, reproduce, distribute, host or otherwise commercially exploit Our Technology or Your Content or any portion thereof, (b) you shall not frame or utilize framing techniques to enclose any trademark, logo, or Our Technology (including images, text, page layout or form) of Positive Development; (c) you shall not use any metatags or other “hidden text” using Positive Development’s name or trademarks; (d) you shall not modify, translate, adapt, merge, make derivative works of, disassemble, decompile, reverse compile or reverse engineer any part of Our Technology except to the extent the foregoing restrictions are expressly prohibited by applicable law; (e) you shall not use any manual or automated software, devices or other processes (including but not limited to spiders, robots, scrapers, crawlers, avatars, data mining tools or the like) to “scrape” or download data from any web pages contained in the App; (f) you shall not access Our Technology in order to build a similar or competitive application or service; (g) except as expressly stated herein, no part of Our Technology may be copied, reproduced, distributed, republished, downloaded, displayed, posted or transmitted in any form or by any means; and (h) you shall not remove or destroy any copyright notices or other proprietary markings contained on or in Our Technology. Any future release, update or other addition to Our

Technology shall be subject to these Terms. Positive Development, its suppliers and service providers reserve all rights not granted in the Terms. Any unauthorized use of Our Technology terminates the licenses granted by Positive Development pursuant to the Terms.

4.6 THIRD-PARTY MATERIALS. As a part of Our Technology, you may have access to materials that are submitted or hosted by another party, such as your Clinician(s). You agree that it is impossible for Positive Development to monitor such materials and that you access these materials at your own risk. We provide these materials only as a convenience and do not review, approve, monitor, endorse, warrant, or make any representations with respect to third party materials.

5. FEES AND PURCHASE TERMS.

5.1. PAYMENT. You agree to pay all fees or charges to your Account in accordance with the fees, charges and billing terms in effect at the time a fee or charge is due and payable. You must provide Positive Development with a valid credit card (Visa, MasterCard, or any other issuer accepted by us) or PayPal account ("**Payment Provider**"). Your Payment Provider agreement governs your use of the designated credit card, and you must refer to that agreement and not the Terms to determine your rights and liabilities. By providing Positive Development with your credit card number and associated payment information, you agree that Positive Development is authorized to immediately invoice your Account for all fees and charges due and payable to Positive Development hereunder and that no additional notice or consent is required. You agree to immediately notify Positive Development of any change in your billing address or the credit card used for payment hereunder. Positive Development reserves the right at any time to change its prices and billing methods, either immediately upon posting on the Platform or by e-mail delivery to you.

5.2. INSURANCE. Positive Development is not an insurer and the Services are not insurance products, and the amounts you pay to Positive Development are not insurance premiums. If you desire any type of health or other insurance, you will need to purchase such insurance separately. Certain of the Services may be reimbursable by your benefit plan, Medicare program, state Medicaid program, or health insurance plan. Reimbursement is at the sole discretion of any such plan or program.

5.3. TAXES. Positive Development's fees are net of any applicable Sales Tax. If any Services, or payments for any Services, under the Terms are subject to Sales Tax in any jurisdiction and you have not remitted the applicable Sales Tax to Positive Development, you will be responsible for the payment of such Sales Tax and any related penalties or interest to the relevant tax authority, and you will indemnify Positive Development for any liability or expense we may incur in connection with such Sales Taxes. Upon our request, you will provide us with official receipts issued by the appropriate taxing authority, or other such evidence that you have paid all applicable taxes. For purposes of this section, "**Sales Tax**" shall mean any sales or use tax, and any other tax measured by sales proceeds, that Positive Development is permitted to pass to its customers, that is the functional equivalent of a sales tax where the applicable taxing jurisdiction does not otherwise impose a sales or use tax.

5.4. WITHHOLDING TAXES. You agree to make all payments of fees to Positive Development free and clear of, and without reduction for, any withholding taxes. Any such taxes imposed on payments of fees to Positive Development will be your sole responsibility, and you will provide Positive Development with official receipts issued by the appropriate taxing authority, or such other evidence as we may reasonably request, to establish that such taxes have been paid.

5.5. AUTOMATIC RENEWAL. Your access to and use of the Services will be charged automatically on a weekly or annual basis (as selected by you) ("**Authorized Period**") in accordance with the Terms. **You agree that your Account will be subject to this automatic charge feature for the remainder of your participation in the Positive Development Program.** If you do not wish your Account to automatically charge your Payment Provider, or if you want to change or terminate your participation in the Positive Development Program, please contact Positive Development at financeca@positivedevelopment.com or log in and go to the "Change/Cancel Membership" page on your "Account Settings" page. If you cancel in the middle of an Authorized Period, you may access and use

the Services until the end of such Authorized Period. However, you will not be eligible for a prorated refund of any portion of the fees paid for the then-current Authorized Period. By accessing and using the Services, you authorize Positive Development to charge your Payment Provider now, and again at the beginning of each seven (7) day period or twelve (12) month period following your access to the Services. Upon expiration of the then-current Authorized Period, if Positive Development does not receive payment from your Payment Provider, (i) you agree to pay all amounts due on your Account upon demand, and/or (ii) you agree that Positive Development may either terminate or suspend your Account and continue to attempt to charge your Payment Provider until payment is received (upon receipt of payment, your Account will be re-activated, and your new Authorized Period will begin as of the day payment was received).

5.6. DISPUTES. You must notify us in writing within seven (7) days after receiving your credit card statement, if you dispute any of our charges on that statement or such dispute will be deemed waived. Billing disputes should be notified to the following address: financeca@positivedevelopment.com

5.7. THIRD PARTY PAYMENT PROCESSOR. For online payments and/or automated clearing house (ACH) payouts within the United States, we use the payment services of [Paragon](#) Payment Solutions (provided by Paragon Solutions, Inc.) and Square Payments Processing (provided by Square, Inc.). We do not process, record or maintain your credit card or bank account information and we will share transaction data with our payment services providers only to the extent necessary for the purposes of processing your payments, refunding such payments and dealing with complaints and queries relating to such payments and refunds. For more information on how payments are handled, or to understand the data security and privacy afforded such information, please refer to the privacy policy of the applicable payment processor processing your payments (<https://paragonsolutions.com/privacy-policy/> or <https://squareup.com/us/en/legal/general/privacy>).

6. USAGE DATA.

6.1. DE-IDENTIFIED AND AGGREGATED DATA. Subject to applicable laws and regulations, you agree Positive Development may de-identify and/or aggregate, and analyze, any of Your Content, and agree that Positive Development exclusively owns such de-identified and/or aggregated data and any improvements or new products or services arising therefrom.

6.2. MARKETING. You acknowledge and agree that Positive Development may use your personal information including your registration information, but expressly excluding Your Content shared through Videotaped Sessions and Video Content, to provide marketing and advertising communications and materials to you for purposes of promoting our Services. You understand that you may opt out of receiving such marketing and advertising communications and materials at any time, except to the extent that Positive Development has already acted based on your consent before it was revoked, by providing written notice to us at []. You understand that revoking your consent to receive marketing and advertising materials and communications from Positive Development is separate and apart from revoking your consent to the Terms of Use presented herein, and your revocation of consent to receive marketing and advertising materials and communications in no way affects your right to consent to the Terms of Use or to use of the Services described herein.

7. APP STORES. You acknowledge and agree that the availability of the App and the Services is dependent on the third party from whom you received the App license, e.g., the Apple App Store or Google Play (each, an “**App Store**”). You acknowledge that the Terms is between you and Positive Development and not with the App Store. Positive Development, not the App Store, is solely responsible for Our Technology, including the App, the content thereof, maintenance, support services, and warranty therefor, and addressing any claims relating thereto (e.g., product liability, legal compliance or intellectual property infringement). In order to use the App, you must have access to a wireless network, and you agree to pay all fees associated with such access. You also agree to pay all fees (if any) charged by the App Store in connection with Our Technologies, including the App. You agree to comply with, and your license to use the App is conditioned upon your compliance with all terms of agreement imposed by the applicable App Store when using any Our Technology, including the App. You acknowledge that the App Store (and its subsidiaries) are third-party beneficiaries of the Terms and will have the right to enforce them.

8. Interactions with Other Users.

8.1. User Responsibility. You are solely responsible for your interactions with Clinicians with whom you interact; provided, however, that Positive Development reserves the right, but has no obligation, to intercede in such disputes. You agree that Positive Development will not be responsible for any liability incurred as the result of such interactions.

8.2. Release. You acknowledge that Positive Development merely provides a means for Patients to schedule therapy sessions with Clinicians and to access Videotaped Sessions and Video Content. Positive Development does not have any control or authority over any Clinicians, and is not responsible for their actions and inactions. You hereby release Positive Development and its successors from claims, demands, any and all losses, damages, rights, and actions of any kind, including personal injuries, death, and property damage, that is either directly or indirectly related to or arises from your use of the App, Website, and Services, including your interactions with Clinicians. If you are a California resident, you hereby waive California Civil Code Section 1542, which states, "A general release does not extend to claims which the creditor or releasing party does not know or suspect to exist in his favor at the time of executing the release, which, if known by him must have materially affected his settlement with the debtor or the released party." The foregoing release does not apply to any claims, demands, or any losses, damages, rights and actions of any kind, including personal injuries, death or property damage for any unconscionable commercial practice by a Positive Development or for such party's fraud, deception, false, promise, misrepresentation or concealment, suppression or omission of any material fact in connection with the App, Website or any Services provided hereunder.

9. Indemnification. You agree to indemnify and hold Positive Development and their respective parents, subsidiaries, affiliates, officers, employees, agents, partners and licensors (collectively, the "**Positive Development Parties**") harmless from any losses, costs, liabilities and expenses (including reasonable attorneys' fees) relating to or arising out of your Videotaped Sessions, Video Content, and/or your breach of these Terms. Positive Development reserves the right, at its own cost, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you, in which event you will fully cooperate with Positive Development in asserting any available defenses. This provision does not require you to indemnify any of the Positive Development Parties for any unconscionable commercial practice by such party or for such party's fraud, deception, false promise, misrepresentation or concealment, suppression or omission of any material fact in connection with the Application or any Services provided hereunder. You agree that the provisions in this section will survive any termination of your Account, the Terms or your access to the Services.

10. Disclaimer of Warranties and Conditions.

10.1. As Is. YOU EXPRESSLY UNDERSTAND AND AGREE THAT TO THE EXTENT PERMITTED BY APPLICABLE LAW, YOUR USE OF SERVICES IS AT YOUR SOLE RISK, AND SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITH ALL FAULTS. POSITIVE DEVELOPMENT PARTIES EXPRESSLY DISCLAIM ALL WARRANTIES, REPRESENTATIONS, AND CONDITIONS OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT ARISING FROM USE OF THE APPLICATION.

(A) POSITIVE DEVELOPMENT PARTIES MAKE NO WARRANTY, REPRESENTATION OR CONDITION THAT: (1) SERVICES WILL MEET YOUR REQUIREMENTS; (2) YOUR USE OF SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE OR ERROR-FREE; OR (3) THE RESULTS THAT MAY BE OBTAINED FROM USE OF SERVICES WILL BE ACCURATE OR RELIABLE.

(B) ANY CONTENT VIEWED OR OTHERWISE ACCESSED THROUGH SERVICES IS ACCESSED AT YOUR OWN RISK, AND YOU SHALL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR PROPERTY, INCLUDING, BUT NOT

LIMITED TO, YOUR COMPUTER SYSTEM AND ANY DEVICE YOU USE TO ACCESS SERVICES, OR ANY OTHER LOSS THAT RESULTS FROM ACCESSING SUCH CONTENT.

(C) THE SERVICES MAY BE SUBJECT TO DELAYS, CANCELLATIONS AND OTHER DISRUPTIONS. POSITIVE DEVELOPMENT MAKES NO WARRANTY, REPRESENTATION OR CONDITION WITH RESPECT TO SERVICES, INCLUDING BUT NOT LIMITED TO, THE QUALITY, EFFECTIVENESS, REPUTATION AND OTHER CHARACTERISTICS OF SERVICES.

(D) NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED FROM POSITIVE DEVELOPMENT OR THROUGH SERVICES WILL CREATE ANY WARRANTY NOT EXPRESSLY MADE HEREIN.

(E) FROM TIME TO TIME, POSITIVE DEVELOPMENT MAY OFFER NEW "BETA" FEATURES OR TOOLS WITH WHICH ITS USERS MAY EXPERIMENT. SUCH FEATURES OR TOOLS ARE OFFERED SOLELY FOR EXPERIMENTAL PURPOSES AND WITHOUT ANY WARRANTY OF ANY KIND, AND MAY BE MODIFIED OR DISCONTINUED AT POSITIVE DEVELOPMENT'S SOLE DISCRETION. THE PROVISIONS OF THIS SECTION APPLY WITH FULL FORCE TO SUCH FEATURES OR TOOLS.

10.2. No Liability for Conduct of Clinicians. YOU ACKNOWLEDGE AND AGREE THAT POSITIVE DEVELOPMENT PARTIES ARE NOT LIABLE, AND YOU AGREE NOT TO SEEK TO HOLD POSITIVE DEVELOPMENT PARTIES LIABLE, FOR THE CONDUCT OF THIRD PARTIES, INCLUDING WITHOUT LIMITATION YOUR CLINICIAN(S), AND THAT THE RISK OF INJURY FROM SUCH THIRD PARTIES RESTS ENTIRELY WITH YOU.

11. Limitation of Liability.

11.1. Disclaimer of Certain Damages. YOU UNDERSTAND AND AGREE THAT IN NO EVENT SHALL POSITIVE DEVELOPMENT PARTIES BE LIABLE FOR ANY LOSS OF PROFITS, REVENUE OR DATA, INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH SERVICES, OR DAMAGES OR COSTS DUE TO LOSS OF PRODUCTION OR USE, BUSINESS INTERRUPTION, PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, WHETHER OR NOT POSITIVE DEVELOPMENT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, ARISING OUT OF OR IN CONNECTION WITH THE TERMS, OR FROM ANY COMMUNICATIONS, INTERACTIONS OR MEETINGS WITH OTHER USERS OF SERVICES, ON ANY THEORY OF LIABILITY, RESULTING FROM: (1) THE USE OR INABILITY TO USE SERVICES; (2) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES RESULTING FROM ANY GOODS, DATA, INFORMATION OR SERVICES PURCHASED OR OBTAINED OR MESSAGES RECEIVED FOR TRANSACTIONS ENTERED INTO THROUGH SERVICES; (3) UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR TRANSMISSIONS OR DATA; (4) STATEMENTS OR CONDUCT OF ANY THIRD PARTY ON SERVICES; OR (5) ANY OTHER MATTER RELATED TO SERVICES, WHETHER BASED ON WARRANTY, COPYRIGHT, CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR ANY OTHER LEGAL THEORY. THE FOREGOING CAP ON LIABILITY SHALL NOT APPLY TO LIABILITY OF AN POSITIVE DEVELOPMENT PARTY FOR (A) DEATH OR PERSONAL INJURY CAUSED BY AN POSITIVE DEVELOPMENT PARTY'S NEGLIGENCE; OR FOR (B) ANY INJURY CAUSED BY AN POSITIVE DEVELOPMENT PARTY'S FRAUD OR FRAUDULENT MISREPRESENTATION.

11.2. Cap on Liability. UNDER NO CIRCUMSTANCES WILL POSITIVE DEVELOPMENT PARTIES BE LIABLE TO YOU FOR MORE THAN FIFTY DOLLARS (\$50). THE FOREGOING CAP ON LIABILITY SHALL NOT APPLY TO LIABILITY OF AN POSITIVE DEVELOPMENT PARTY FOR (1) DEATH OR PERSONAL INJURY CAUSED BY AN POSITIVE DEVELOPMENT PARTY'S NEGLIGENCE; OR FOR (2) ANY INJURY CAUSED BY AN POSITIVE DEVELOPMENT PARTY'S FRAUD OR FRAUDULENT MISREPRESENTATION.

11.3. Basis of the Bargain. THE LIMITATIONS OF DAMAGES SET FORTH ABOVE ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN POSITIVE DEVELOPMENT AND YOU.

12. Term and Termination.

12.1. Term. The Terms commence on the date when you accept them (as described in the preamble above) and remain in full force and effect while you use Services, unless terminated earlier in accordance with the Terms.

12.2. Termination of Services by Us. We may terminate and/or suspend the Services, your Account and/or these Terms in the event you breach any terms herein, or if required to do so by applicable law.

12.3. Termination of Services by You. If you want to terminate the Services provided by Positive Development, you may do so by (a) notifying Positive Development at any time and (b) closing your Account for all of the Services that you use. Your notice should be sent, in writing, to Positive Development's address set forth below.

12.4. Effect of Termination. Termination of any Service includes removal of access to such Service and barring of further use of the Service. Termination of all Services also includes deletion of your password and all related information, files and Content associated with or inside your Account (or any part thereof), including Your Content, unless we are required to retain a copy of Your Content in accordance with applicable law. Upon termination of any Service, your right to use such Service will automatically terminate immediately. Positive Development will not have any liability whatsoever to you for any suspension or termination, including for deletion of Your Content. All provisions of the Terms which by their nature should survive, shall survive termination of Services, including without limitation, ownership provisions, warranty disclaimers, and limitation of liability.

13. Dispute Resolution. *Please read the following arbitration agreement in this Section ("Arbitration Agreement") carefully. It requires you to arbitrate disputes with Positive Development and limits the manner in which you can seek relief from us.*

12.1 APPLICABILITY OF ARBITRATION AGREEMENT. You agree that any dispute or claim relating in any way to your access or use of the Services or to any aspect of your relationship with Positive Development, will be resolved by binding arbitration, rather than in court, except that (1) you may assert claims in small claims court if your claims qualify, so long as the matter remains in such court and advances only on an individual (non-class, non-representative) basis; and (2) you or Positive Development may seek equitable relief in court for infringement or other misuse of intellectual property rights (such as trademarks, trade dress, domain names, trade secrets, copyrights, and patents). **This Arbitration Agreement shall apply, without limitation, to all claims that arose or were asserted before the Effective Date of these Terms or any prior version of these Terms.**

IF YOU AGREE TO ARBITRATION WITH POSITIVE DEVELOPMENT, YOU ARE AGREEING IN ADVANCE THAT YOU WILL NOT PARTICIPATE IN OR SEEK TO RECOVER MONETARY OR OTHER RELIEF IN ANY LAWSUIT FILED AGAINST POSITIVE DEVELOPMENT ALLEGING CLASS, COLLECTIVE, AND/OR REPRESENTATIVE CLAIMS ON YOUR BEHALF. INSTEAD, BY AGREEING TO ARBITRATION, YOU MAY BRING YOUR CLAIMS AGAINST THE POSITIVE DEVELOPMENT IN AN INDIVIDUAL ARBITRATION PROCEEDING. IF SUCCESSFUL ON SUCH CLAIMS, YOU COULD BE AWARDED MONEY OR OTHER RELIEF BY AN ARBITRATOR. YOU ACKNOWLEDGE THAT YOU HAVE BEEN ADVISED THAT YOU MAY CONSULT WITH AN ATTORNEY IN DECIDING WHETHER TO ACCEPT THIS AGREEMENT, INCLUDING THIS ARBITRATION AGREEMENT.

12.2 ARBITRATION RULES AND FORUM. The Federal Arbitration Act governs the interpretation and enforcement of this Arbitration Agreement. To begin an arbitration proceeding, you must send a letter requesting arbitration and describing your claim to our registered agent at Positive Development, Inc. c/o Corporation Service Company, 251 Little Falls Drive, Wilmington, Delaware 19808. The arbitration will be conducted by JAMS, an established alternative dispute resolution provider. Disputes involving claims and counterclaims under \$250,000, not inclusive of attorneys' fees and interest, shall be subject to JAMS's most current version of the Streamlined Arbitration Rules and procedures available at <http://www.jamsadr.com/rules-streamlined-arbitration/>; all other claims shall be subject to JAMS's most current version of the Comprehensive Arbitration Rules and Procedures, available at <http://www.jamsadr.com/rules-comprehensive-arbitration/>. JAMS's rules are also available at

www.jamsadr.com or by calling JAMS at 800-352-5267. If JAMS is not available to arbitrate, the parties will select an alternative arbitral forum. If the arbitrator finds that you cannot afford to pay JAMS's filing, administrative, hearing and/or other fees and cannot obtain a waiver from JAMS, Positive Development will pay them for you. In addition, Positive Development will reimburse all such JAMS's filing, administrative, hearing and/or other fees for claims totaling less than \$10,000 unless the arbitrator determines the claims are frivolous. Likewise, Positive Development will not seek attorneys' fees and costs in arbitration unless the arbitrator determines the claims are frivolous. You may choose to have the arbitration conducted by telephone, based on written submissions, or in person in the country where you live or at another mutually agreed location. Any judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction.

12.3 AUTHORITY OF ARBITRATOR. The arbitrator, and not any federal, state or local court or agency shall have exclusive authority to (a) determine the scope and enforceability of this Arbitration Agreement and (b) resolve any dispute related to the interpretation, applicability, enforceability or formation of this Arbitration Agreement including, but not limited to any claim that all or any part of this Arbitration Agreement is void or voidable. The arbitration will decide the rights and liabilities, if any, of you and Positive Development. The arbitration proceeding will not be consolidated with any other matters or joined with any other cases or parties. The arbitrator shall have the authority to grant motions dispositive of all or part of any claim. The arbitrator shall have the authority to award monetary damages and to grant any non-monetary remedy or relief available to an individual under applicable law, the arbitral forum's rules, and the Terms (including the Arbitration Agreement). The arbitrator shall issue a written award and statement of decision describing the essential findings and conclusions on which the award is based, including the calculation of any damages awarded. The arbitrator has the same authority to award relief on an individual basis that a judge in a court of law would have. The award of the arbitrator is final and binding upon you and us.

12.4 WAIVER OF JURY TRIAL. YOU AND POSITIVE DEVELOPMENT HEREBY WAIVE ANY CONSTITUTIONAL AND STATUTORY RIGHTS TO SUE IN COURT AND HAVE A TRIAL IN FRONT OF A JUDGE OR A JURY. You and Positive Development are instead electing that all claims and disputes shall be resolved by arbitration under this Arbitration Agreement, except as specified in Section 13.1 above. An arbitrator can award on an individual basis the same damages and relief as a court and must follow this Agreement as a court would. However, there is no judge or jury in arbitration, and court review of an arbitration award is subject to very limited review.

12.5 WAIVER OF CLASS OR CONSOLIDATED ACTIONS. ALL CLAIMS AND DISPUTES WITHIN THE SCOPE OF THIS ARBITRATION AGREEMENT MUST BE ARBITRATED ON AN INDIVIDUAL BASIS AND NOT ON A CLASS BASIS, ONLY INDIVIDUAL RELIEF IS AVAILABLE, AND CLAIMS OF MORE THAN ONE CUSTOMER OR USER CANNOT BE ARBITRATED OR CONSOLIDATED WITH THOSE OF ANY OTHER CUSTOMER OR USER. Notwithstanding anything to the contrary herein, (a) representative action for public injunctive relief may be arbitrated on a class basis and (b) in the event that the foregoing sentence is deemed invalid or unenforceable with respect to a particular class or dispute for recovery of damages, neither you nor we are entitled to arbitration and instead claims and disputes shall be resolved in a court as set forth in Section 15.1.

12.6 30-DAY RIGHT TO OPT OUT. You have the right to opt out of the provisions of this Arbitration Agreement by sending written notice of your decision to opt out to the following address: financeca@positivedevelopment.com or at 222 East Huntington Drive, Suite 211, Monrovia, California 91016, within 30 days after first becoming subject to this Arbitration Agreement. Your notice must include your name and address, your Positive Development username (if any), the email address you used to set up your Positive Development account (if you have one), and an unequivocal statement that you want to opt out of this Arbitration Agreement. If you opt out of this Arbitration Agreement, all other parts of this Agreement will continue to apply to you. Opting out of this Arbitration Agreement has no effect on any other arbitration agreements that you may currently have, or may enter in the future, with us.

12.7 SEVERABILITY. If any part or parts of this Arbitration Agreement are found under the law to be invalid or unenforceable, then such specific part or parts shall be of no force and effect and shall be severed and the remainder of the Arbitration Agreement shall continue in full force and effect.

12.8 SURVIVAL OF AGREEMENT. This Arbitration Agreement will survive the termination of your relationship with Positive Development.

12.9 MODIFICATION. Notwithstanding any provision in this Agreement to the contrary, we agree that if Positive Development makes any future material change to this Arbitration Agreement, it will not apply to any individual claim(s) that you had already provided notice of to Positive Development.

14. AMENDMENT. We may change these Terms from time to time. Any such changes will become effective when posted on the App. If you object to any such changes, your sole recourse will be to cease using the App. Continued use of the App or Website following posting of any such changes will indicate your acknowledgement of such changes and your agreement to be bound by the revised Terms, inclusive of such changes.

15. GENERAL PROVISIONS.

15.1. You are responsible for compliance with all applicable laws. The Terms and the relationship between you and us will be governed by the laws of the State of Delaware, without giving effect to any choice of laws principles that would require the application of the laws of a different country or state. Any legal action, suit or proceeding arising out of or relating to the Terms or your use of the App or Website that are not subject to Section 13 must be instituted exclusively in the federal or state courts located in Delaware, and in no other jurisdiction. You further consent to exclusive personal jurisdiction and venue in, and agree to service of process issued or authorized by, any such court. These Terms are personal to you, and you may not transfer, assign or delegate your right and/or duties under these Terms to anyone else and any attempted assignment or delegation is void. You acknowledge that we have the right hereunder to seek an injunction, if necessary, to stop or prevent a breach of your obligations hereunder. The paragraph headings in these Terms, shown in boldface type, are included only to help make these Terms easier to read and have no binding effect. Any delay or failure by us to exercise or enforce any right or provision of these Terms will not constitute a waiver of such right or provision. No waiver by us will have effect unless such waiver is set forth in writing, signed by us; nor will any such waiver of any breach or default constitute a waiver of any subsequent breach or default. If for any reason a court of competent jurisdiction finds any provision of these Terms, or portion thereof, to be unenforceable, that provision of the Terms will be enforced to the maximum extent permissible so as to effect the intent of the parties, and the remainder of these Terms will continue in full force and effect. These Terms along with the agreements referenced in these Terms constitute the entire agreement between you and us with regard to the matters described above. Positive Development shall not be liable for any delay or failure to perform resulting from causes outside its reasonable control, including, but not limited to, acts of God, war, terrorism, riots, embargos, acts of civil or military authorities, fire, floods, accidents, strikes or shortages of transportation facilities, fuel, energy, labor or materials.

15.2. COMMUNICATIONS. The communications between you and us relating to the App or Website use electronic means. For contractual purposes, you (a) consent to receive communications from us in an electronic form, whether via email or posting on the App or Website or other reasonable means; and (b) agree that all terms and conditions, agreements, notices, disclosures, and other communications that we provide to you electronically satisfy any legal requirement that such communications would satisfy if it were in a writing. If you have any questions about the foregoing, please contact us at the following e-mail address: financeca@positivedevelopment.com

15.3. QUESTIONS, COMPLAINTS, CLAIMS. If you have any questions, complaints or claims with respect to Our Technology, please contact us at financeca@positivedevelopment.com. We will do our best to address your concerns. If you feel that your concerns have been addressed incompletely, we invite you to let us know for further investigation.

15.4. EXPORT CONTROL. You may not use, export, import, or transfer Our Technology except as authorized by U.S. law, the laws of the jurisdiction in which you obtained Our Technology, and any other applicable laws. In particular, but without limitation, Our Technology may not be exported or re-exported (a) into any United States embargoed countries, or (b) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce's Denied Person's List or Entity List. By using Our Technology, you represent and warrant that (y) you are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country and (z) you are not listed on any U.S. Government list of prohibited or restricted parties. You also will not use Our Technology for any purpose prohibited by U.S. law, including the development, design, manufacture or production of missiles, nuclear, chemical or biological weapons. You acknowledge and agree that products, services or technology provided by Positive

Development are subject to the export control laws and regulations of the United States. You shall comply with these laws and regulations and shall not, without prior U.S. government authorization, export, re-export, or transfer Positive Development products, services or technology, either directly or indirectly, to any country in violation of such laws and regulations.

15.5. CONSUMER COMPLAINTS. In accordance with California Civil Code §1789.3, you may report complaints to the Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs by contacting them in writing at 1625 North Market Blvd., Suite N 112, Sacramento, CA 95834, or by telephone at (800) 952-5210.

15.6. ACCESSING AND DOWNLOADING THE APPLICATION FROM THE APPLE APP STORE. The following applies to any App Store Sourced Application accessed through or downloaded from the Apple App Store:

(a) You acknowledge and agree that (i) the Terms are concluded between you and Positive Development only, and not Apple, and (ii) Positive Development, not Apple, is solely responsible for the App Store Sourced Application and content thereof. Your use of the App Store Sourced Application must comply with the App Store Terms of Service.

(b) You acknowledge that Apple has no obligation whatsoever to furnish any maintenance and support services with respect to the App Store Sourced Application.

(c) In the event of any failure of the App Store Sourced Application to conform to any applicable warranty, you may notify Apple, and Apple will refund the purchase price for the App Store Sourced Application to you and to the maximum extent permitted by applicable law, Apple will have no other warranty obligation whatsoever with respect to the App Store Sourced Application. As between Positive Development and Apple, any other claims, losses, liabilities, damages, costs or expenses attributable to any failure to conform to any warranty will be the sole responsibility of Positive Development.

(d) You and Positive Development acknowledge that, as between Positive Development and Apple, Apple is not responsible for addressing any claims you have or any claims of any third party relating to the App Store Sourced Application or your possession and use of the App Store Sourced Application, including, but not limited to: (i) product liability claims; (ii) any claim that the App Store Sourced Application fails to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection or similar legislation.

(e) You and Positive Development acknowledge that, in the event of any third-party claim that the App Store Sourced Application or your possession and use of that App Store Sourced Application infringes that third party's intellectual property rights, as between Positive Development and Apple, Positive Development, not Apple, will be solely responsible for the investigation, defense, settlement and discharge of any such intellectual property infringement claim to the extent required by the Terms.

(f) You and Positive Development acknowledge and agree that Apple, and Apple's subsidiaries, are third-party beneficiaries of the Terms as related to your license of the App Store Sourced Application, and that, upon your acceptance of the terms and conditions of the Terms, Apple will have the right (and will be deemed to have accepted the right) to enforce the Terms as related to your license of the App Store Sourced Application against you as a third-party beneficiary thereof.

(g) Without limiting any other terms of the Terms, you must comply with all applicable third-party terms of agreement when using the App Store Sourced Application.