

**TERMS OF SERVICE**  
**Revised: March 1, 2022**

**1. ACCEPTANCE OF TERMS**

KLOwen Braces, Inc. (“KLOwen”) provides technology-enabled custom orthodontics services, including the website at <http://www.klowenbraces.com/> (the “Website”), any Mobile Apps (as defined below), training services, and other related software, content, and services, including all versions and upgrades thereto (collectively, the “Services”). Your use of the Services is subject to and governed by the terms and conditions in this Terms of Service (“TOS”). KLOwen may, at its discretion, update this TOS at any time. You can access and review the most current version of this TOS at the URL for this page or by clicking on the “Terms of Service” link within the Services, or as otherwise made available by KLOwen.

PLEASE REVIEW THIS TOS CAREFULLY. BY REGISTERING FOR AN ACCOUNT OR OTHERWISE ACCESSING OR USING THE SERVICES, YOU AGREE TO BE BOUND BY THIS TOS, INCLUDING ANY UPDATES OR REVISIONS POSTED HERE OR OTHERWISE COMMUNICATED TO YOU. IF YOU DO NOT AGREE WITH THE TERMS AND CONDITIONS OF THIS TOS, YOU MAY NOT ACCESS OR USE THE SERVICES.

**THIS TOS REQUIRES FINAL AND BINDING ARBITRATION TO RESOLVE ANY DISPUTE OR CLAIM ARISING OUT OF OR RELATING IN ANY WAY TO THIS TOS, OR YOUR ACCESS TO OR USE OF THE SERVICES, INCLUDING THE VALIDITY, APPLICABILITY OR INTERPRETATION OF THIS TOS, AND YOU AGREE THAT ANY SUCH CLAIM WILL BE RESOLVED ONLY ON AN INDIVIDUAL BASIS AND NOT IN A CLASS, CONSOLIDATED OR REPRESENTATIVE ACTION, ARBITRATION OR OTHER SIMILAR PROCESS. PLEASE REVIEW SECTION 13 CAREFULLY TO UNDERSTAND YOUR RIGHTS AND OBLIGATIONS WITH RESPECT TO THE RESOLUTION OF ANY CLAIM.**

You represent and warrant that you: (a) are of legal age to form a binding contract; (b) have the right, authority, and capacity to agree to and abide by this TOS; and (c) are not a person barred from using the Services under the laws of any applicable jurisdiction. THE SERVICES ARE NOT INTENDED FOR USERS UNDER THE AGE OF 13, AND SUCH USERS ARE EXPRESSLY PROHIBITED FROM SUBMITTING ANY PERSONAL DATA OR USING ANY ASPECT OF THE SERVICES, AND BY TAKING SUCH ACTIONS YOU AGREE, REPRESENT, AND WARRANT THAT YOU ARE 13 YEARS OF AGE OR OLDER.

**2. SALE AND PURCHASE; LICENSE**

(a) **Sale and Purchase.** KLOwen agrees to sell to customers who have agreed to purchase products (“Products”) from KLOwen (each, a “Customer”) as set forth in a purchase order or any other KLOwen-approved written or web-based purchase agreement tendered to KLOwen (each, an “Order”) or otherwise as set forth in the Services or Third Party Components, any and all of which shall be governed by these TOS except as set forth therein. Customer acknowledges and understands that certain Products may require Customer to have valid and verifiable accounts for certain third party systems or components provided by entities other than KLOwen, (“Third Party Components”) in order for such Third Party Components to interoperate with the Services. Customer acknowledges and agrees that different terms of use and privacy policies may apply to Customer’s use of such Third Party Components and that terms and policies are solely between Customer and the provider of such Third Party Components. In addition, Customer may need to license, modify, and/or install the Third Party Components and is solely responsible for such activities. Customer represents and warrants that Customer’s and its employees’, agents’ and other personnels’ (“Authorized Users”) Third Party Component accounts are in good standing and that Customer and its Authorized Users’ use of the Services, including without limitation any integration with the Third Party Components, will not be in violation of any applicable Third Party Component terms. Customer acknowledges and agrees that KLOwen has no control over the provision of Third Party Components or provision of access to the Third Party Components by Customer’s provider(s). KLOwen will have no liability whatsoever for any actions or inactions on the part of the provider(s) resulting in Customer’s inability to use the Services to access Customer’s accounts, obtain data, or otherwise use or access the Third Party Components. Further, information Customer makes available via Third Party Components is subject to the privacy policies of such third parties. Customer agrees that KLOwen will use the Third Party Components at Customer’s sole risk Customer also acknowledges and understands that it must comply with any instructions provided by KLOwen as well as perform

any tasks and fulfill any responsibilities specified in each Order or as otherwise provided by KLOWen ("Customer Responsibilities"), including without limitation, obtaining any required hardware for use in connection with the Services, such as scanners.

(b) **Grant.** If a Product includes any KLOWen-provided software or technical documentation made available from KLOWen from time to time (collectively, the "Software"), subject to and conditioned on your compliance with this TOS, KLOWen hereby grants you a non-exclusive, non-transferable, non-sublicensable, revocable license to use the Software for its internal purposes and solely in conjunction with the use of the Product to which it relates. Customer acknowledges that the Software may also be subject to additional terms and conditions set forth in executable or electronic license agreements, which shall control and govern all such licensed Software use to the extent necessary to resolve any conflict with these TOS. Your access to and use of the Services must further comply in all material respects with all usage guidelines posted by KLOWen.

(c) **Training Services.** KLOWen may also offer and provide training services related to the Products and/or Software as may be identified in an Order ("Training Services"), which shall be subject to these TOS. Customer shall perform the tasks and fulfill the responsibilities specified in each Order or as otherwise provided by KLOWen ("Customer Training Responsibilities") in connection with the Training Services. KLOWen's performance of the Training Services is subject to: (i) Customer completing the Customer Training Responsibilities in a timely manner; (ii) the assumptions set forth in an Order remaining valid; and (iii) Customer obtaining all licenses and consent required from third parties with respect to any materials provided by Customer under these TOS that are required for use by KLOWen to fulfill its obligations hereunder.

(d) **Mobile Apps.** KLOWen may make available mobile software applications for access to and use of certain components of the Services (collectively, "Mobile Apps"). Your access to and use of Mobile Apps is subject to and governed by this TOS. If any Mobile App is downloaded by you from the iTunes App Store (each, an "iOS Mobile App"), your use of such iOS Mobile App is further subject to your compliance in all material respects with the terms and conditions of the Usage Rules set forth in the iTunes App Store Terms of Service. This TOS is between you and KLOWen only, and not with Apple Inc. ("Apple") or any other app store provider, and Apple is not responsible for iOS Mobile Apps and the contents thereof; however, Apple and Apple's subsidiaries are third-party beneficiaries of this TOS with respect to iOS Mobile Apps.

(e) **Trademarks.** You may not use the KLOWen names, brands, trademarks, service marks and logos that KLOWen makes available on the Services ("Marks"). KLOWen claims trademark protection over all such Marks and you will not use the Marks except as expressly authorized herein. You will not remove or alter the Marks or any proprietary notices on the Services. The Marks may not be included in or as part of any registered corporate name, any other logo, or service or product name. You may not create any derivative works of the Marks or use the Marks in a manner that creates or reasonably implies an inaccurate sense of endorsement, sponsorship, or association with KLOWen. You will not otherwise use business names or logos in a manner that can mislead, confuse, or deceive any third party. All use of the Marks and all goodwill arising out of such use, will inure to KLOWen's benefit.

### **3. PRIVACY POLICY AND CUSTOMER CONTENT**

(a) **Privacy Policy.** In addition to this TOS, the KLOWen Privacy Policy at [IN PROCESS] ("Privacy Policy") applies to how KLOWen may process information provided as part of the Services. You acknowledge and agree that by accessing or using the Services, KLOWen may receive certain information about you, including personal data, as set forth in the Privacy Policy, and KLOWen may collect, use, disclose, store, share, and process such personal data in accordance with such Privacy Policy.

(b) **Customer Content.** Customer and its Authorized Users may input or upload text, images, photos, videos, sounds, links, works of authorship or other materials to the Services (collectively, the "Customer Content"). KLOWen does not claim ownership of your Customer Content. By posting or sharing the Customer Content, Customer grants to KLOWen only the limited rights that are reasonably necessary for KLOWen to provide the Services to Customer and its Authorized Users. Customer represents and warrants that: (i) Customer owns the Customer Content or otherwise has the right to grant the license set forth in this section, and (ii) transmitting Customer Content on or through the Services does not violate the privacy rights, publicity rights, copyrights,

trademark rights, contract rights or any other rights of any person or entity. Customer shall only collect, process, use, store, disclose and transfer Customer Content and End User Data (defined below) in compliance with any applicable Third Party Component terms, privacy policies or other terms between Customer and its Authorized Users or other End Users. Customer acknowledges that KLOwen does not have any control over the Customer Content, including End User Data that passes through KLOwen's systems and networks through the Services. KLOwen is not responsible for monitoring Customer Content and collects such Customer Content automatically under Customer's direction when providing the Services to Customer and Authorized Users. KLOwen may, but does not have any obligation to, remove any of the Customer Content from the Services in our sole discretion, including if KLOwen determines that it may violate another person's intellectual property rights, this TOS, any applicable Third Party Component Terms, or applicable law. Customer acknowledges that KLOwen will have access to the Customer Content as it is being transmitted via the Services to the applicable Third Party Component and may need to translate, reformat, re-tag or otherwise modify technical elements of the Customer Content to make it more appropriately visualized in the applicable Third Party Component or otherwise conform to the specifications of a Third Party Component. It is Customer's sole responsibility to back-up its Customer Content. Customer acknowledges and agrees that after termination of this TOS, Customer may not have access to the Customer Content via the Services.

(c) **Customer Privacy Obligations.** Customer hereby represents that it has obtained, and during the Term covenants that it will obtain, all necessary rights and consents (including without limitation approval from Customer's customers and their respective end users ("End Users")), to allow KLOwen to collect, process, use, store, disclose and transfer Customer Content and other data collected from End Users to and from Third Party Components via the Services, which data may include personal or sensitive information of End Users ("**End User Data**"). Additionally, Customer hereby consents, and shall get appropriate consents and approvals from its End Users, for KLOwen to use End User Data as provided in KLOwen's Privacy Policy. KLOwen's provision of the Services to Customer is specifically conditioned upon Customer obtaining such consents and approvals. As between Customer and KLOwen, Customer is solely responsible for disclosing to its End Users that KLOwen is obtaining End User Data through the Services. Customer must make End Users aware that such End User Data will be available to KLOwen via the Services, and Customer must provide a legally adequate privacy notice and protection for End Users. Customer is responsible for maintaining the security of all End User Data when processing it by its own information systems infrastructure and/or processes. Customer understands and agrees that neither KLOwen nor any Third Party Component provider, nor other KLOwen customers, will have any liability for any loss or breach of any End User Data that is collected or stored by Customer. KLOwen will be responsible and will be liable for any loss or breach of the Customer or End User Data when processed by its owns systems and/or infrastructure.

(d) **HIPAA.** Customer acknowledges and understands that the Services may require the use and disclosure of protected health information ("PHI") as defined under the Health Insurance Portability and Accountability Act of 1996 and related regulations and legislation ("HIPAA"). Furthermore, KLOwen and Customer understand that the Services may require the use and disclosure of PHI and each of Customer and KLOwen agree to only use and disclose PHI in compliance with HIPAA, including any data breach notification and mitigation requirements set forth therein.

#### **4. PROPRIETARY RIGHTS**

(a) You grant KLOwen and its service providers a perpetual, irrevocable, worldwide, royalty-free, fully-paid-up, non-exclusive, sublicensable, transferable license to use, reproduce, modify, adapt, create derivative works from, publicly perform, publicly display, distribute, make and have made all content (in any form and any medium, whether now known or later developed) that you provide in connection with the Services. You acknowledge and agree that the technical processing and transmission of data associated with the Services, may require: (i) transmissions over various networks and across borders; and (ii) modifications to conform, connect, and adapt to technical requirements of networks or devices.

(b) The Services provided to you hereunder or available to you through the Services are licensed, not sold, and KLOwen retains and reserves all rights not expressly granted in this TOS. You acknowledge and agree that, as between you and KLOwen, KLOwen and its licensors owns all rights, title and interest (including all intellectual property rights) in the Services and all data, content, and other materials within the Services. The

Services are protected by U.S. and international copyright and other intellectual property laws and treaties. KLOwen reserves all rights not expressly granted to you in this TOS.

(c) You may not share your account or password with anyone. You are fully responsible for all activities that occur under your account. You agree to notify KLOwen immediately of any unauthorized use of your account or password or any other similar breach of security. If your account remains inactive for six months or longer, KLOwen reserves the right to suspend or terminate your account, with or without notice to you, and delete your content all without liability.

## 5. USER CONDUCT AND RESTRICTIONS

(a) In your use of the Services, you will not:

(i) use, reproduce, modify, adapt, create derivative works from, sublicense, publicly perform, publicly display, distribute, sell, lease, rent, make, have made, assign, pledge, transfer or otherwise grant rights to the Services, except as expressly permitted under this TOS;

(ii) reverse engineer, disassemble, decompile, translate, or otherwise attempt to derive trade secrets, algorithms, or the source code, architectural framework, or data records, within or associated with the Services;

(iii) interfere with or disrupt the integrity or performance of the Services, including by disrupting the ability of any other person to use or enjoy the Services;

(iv) provide use of the Services on a service bureau, rental or managed services basis, provide or permit other individuals or entities to create Internet "links" to the Services or "frame" or "mirror" the Services on any other server, or wireless or Internet-based device;

(v) access the Services for the purpose of developing, marketing, selling or distributing any product or service that competes with or includes features substantially similar to the Services;

(vi) violate any applicable local, state, provincial, federal or international law or regulation, or use the Services for any illegal, unauthorized or otherwise improper purposes, including to store or transmit malicious code, or to store or transmit material in violation of third-party privacy rights;

(vii) remove or obscure any proprietary notice that appears within the Services;

(viii) impersonate any person or entity, including KLOwen personnel, or falsely state or otherwise misrepresent your affiliation with KLOwen, or any other entity or person;

(ix) forge headers or otherwise manipulate identifiers in order to disguise the origin of any content transmitted through the Services;

(x) take any action that imposes an unreasonable or disproportionately heavy load on the Services or its infrastructure; or

(xi) use spiders, crawlers, robots, scrapers, automated tools or any other similar means to access the Services; or download, reproduce, or archive any substantial portion of the Services.

(b) You will not: upload, post, email, store, transmit, or otherwise make available any content that:

(i) is illegal, harmful, threatening, abusive, harassing, tortious, defamatory, vulgar, obscene, libelous, invasive of another's privacy, hateful, or otherwise objectionable;

(ii) may not be made available under any law or under contractual or fiduciary relationships (such as confidential or proprietary information learned as part of an employment relationship or under a non-disclosure agreement);

(iii) infringes any patent, trademark, trade secret, copyright, or other proprietary right of any party;

- (iv) consists of unsolicited or unauthorized advertising, promotional materials, junk mail, spam, chain letters, pyramid schemes, commercial electronic messages, or any other form of solicitation;
- (v) contains software viruses or any other code, files or programs designed to interrupt, destroy or limit the functionality of any software or hardware;
- (vi) contains infringing, libelous, or otherwise unlawful or tortious material; or
- (vii) consists of information that you know or have reason to know is false or inaccurate.

(c) KLOWen's failure to enforce any of these restrictions or guidelines shall not act as a waiver for any future enforcement, will not be considered a breach of this TOS by KLOWen, and does not create a private right of action for any other party.

## 6. SALES AND DELIVERY TERMS

(a) **Sale.** Payment is earned at the time Customer orders or initiates such request for a Product. All fees and Payments are fully earned and non-refundable at the time the Product / item is ordered,

(b) **Risk of Loss.** All purchases of physical items from KLOWen are made FOB Carrier. This means that the risk of loss and title for such items pass to you upon our delivery to the carrier.

(c) **Returns, Refunds and Title.** KLOWen does not allow for store credit, refunds or returns except for certain circumstances in the sole and absolute discretion of KLOWen. In the event that KLOWen does allow a return, KLOWen does not take title to returned items until the item arrives at our fulfillment center. At our discretion, a refund may be issued without requiring a return. In this situation, KLOWen does not take title to the refunded item.

(d) **Product Descriptions.** KLOWen attempts to be as accurate as possible; however; KLOWen does not warrant that product descriptions or other content of any Services is accurate, complete, reliable, current, or error-free. If a product offered by KLOWen itself is not as described, your sole remedy is to return it in unused condition.

(e) **Payment.** Customer shall pay all agreed upon fees for all products ordered through the Services (i) as set forth in an Order and (ii) as invoiced to Customer and based upon Customer's aggregated monthly activity on the Services or other Third Party Component's services, as applicable and in accordance with the latest pricing sheet provided by KLOWen from time to time ("Fees") in accordance with terms set forth therein or herein and any additional terms set forth on the Services. You hereby authorize KLOWen, a Third Party Component, or another such third party payment processor to charge your credit card on file for all Fees that have become due and payable.

(f) **Delivery.** KLOWen will use commercially reasonable efforts to meet requested delivery dates or other related delivery requests but cannot and does not warrant quoted shipment or delivery dates, time frames or other requests and may fulfill ordered items by partial and incremental shipments, in its sole discretion. Customer acknowledges and agrees that all costs and obligations associated with shipment and delivery of Products shall be borne solely by Customer; that any insurance desired therefor shall be Customer's sole obligation and expense; and that KLOWen, shall not be liable for any direct, indirect or consequential damage or loss that the Customer may incur resulting from any delivery failure or delay.

(g) **Taxes.** Unless otherwise noted, items sold by KLOWen are subject to state and local sales tax in accordance with applicable laws. KLOWen may not collect sales or use taxes in all states. For states imposing sales or use taxes, your purchase is subject to use tax unless it is specifically exempt from taxation. Your purchase is not exempt merely because it is made over the Internet or by other remote means. Many states require purchasers to file a sales/use tax return at the end of the year reporting all of the taxable purchases that were not taxed and to pay tax on those purchases. Details of how to file these returns may be found at the websites of your respective taxing authorities. The sales tax indicated on the checkout page is an estimate. The sales tax ultimately charged to your credit card will be calculated when your credit card charge is authorized and will reflect applicable state and local taxes.

## **7. FEEDBACK**

If you elect to provide or make available to KLOWen any suggestions, comments, ideas, improvements or other feedback relating to the Services ("Feedback"), KLOWen shall own and be free to use, reproduce, modify, adapt, create derivative works from, publicly perform, publicly display, distribute, make, have made, assign, pledge, transfer or otherwise grant rights in your Feedback in any form and any medium (whether now known or later developed), without credit or compensation to you.

## **8. DEALINGS WITH ADVERTISERS AND OTHER THIRD PARTIES**

The Services may include or provide access to third party products, services, content, or offerings, including advertising for such ("Third Party Services"). You acknowledge that different terms of use and privacy policies may apply to your use of such Third Party Services and that terms and policies are solely between you and the advertiser or other third party. You agree that does not endorse and is not responsible or liable for any issues related to Third Party Services.

## **9. INDEMNIFICATION**

You shall indemnify and hold KLOWen and its affiliates, and each of their officers, directors, employees, agents, partners and licensors (collectively, "KLOWen Parties") harmless from and against all losses, damages, costs, liabilities, and expenses, including reasonable attorneys' fees, to extent resulting from or arising out of any third party claim, demand, or action due to (a) content you provide to KLOWen; (b) your violation of this TOS, any law or regulation (including HIPAA), or any rights (including intellectual property rights) of another party; (c) your use of the Services, except as expressly permitted in this TOS, including use of the Services in combination with any content, data, products or services not supplied by or instructed for use by KLOWen; (d) your own business, the actions of your employees or other services providers, and your provision of services to customers and/or end users; (e) Customer's Content or End User Data, including without limitation claims, damages and liabilities arising from Customer's failure to comply with applicable law, or with any privacy policy or other agreement under which such Content or End User Data was obtained or alleging that Customer's Content and End User Data infringes or misappropriates such third party's intellectual property rights; or (f) Customer's use of Third Party Components.

## **10. DISCLAIMER OF WARRANTIES**

(a) YOUR USE OF THE SERVICES IS AT YOUR SOLE RISK. THE SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITH ALL FAULTS. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, KLOWEN PARTIES EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED OR ARISING FROM STATUTE, COURSE OF DEALING, USAGE OF TRADE OR OTHERWISE, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, QUALITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT.

(b) KLOWEN PARTIES MAKE NO WARRANTY OR REPRESENTATION THAT: (I) THE SERVICES WILL MEET YOUR REQUIREMENTS; (II) ACCESS TO THE SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE, VIRUS-FREE, OR ERROR-FREE; OR (III) THE INFORMATION AND ANY RESULTS THAT MAY BE OBTAINED FROM ACCESS TO OR USE OF THE SERVICES WILL BE ACCURATE, RELIABLE, CURRENT, OR COMPLETE.

(c) ALL CONTENT MADE AVAILABLE THROUGH THE SERVICES IS MADE AVAILABLE FOR INFORMATIONAL PURPOSES ONLY. YOU ARE SOLELY RESPONSIBLE FOR CONFIRMING THE ACCURACY OF ALL CONTENT BEFORE TAKING OR OMITTING ANY ACTION.

(d) THIS DISCLAIMER OF WARRANTY MAY NOT BE VALID IN SOME JURISDICTIONS AND YOU MAY HAVE WARRANTY RIGHTS UNDER LAW WHICH MAY NOT BE WAIVED OR DISCLAIMED. ANY SUCH WARRANTY EXTENDS ONLY FOR THIRTY (30) DAYS FROM THE EFFECTIVE DATE OF THIS AGREEMENT (UNLESS SUCH LAW PROVIDES OTHERWISE).

## **11. LIMITATION OF LIABILITY**

(a) KLOWEN PARTIES SHALL NOT BE LIABLE FOR ANY LOST PROFITS, LOSS OF DATA OR GOODWILL, OR COST OF COVER, OR FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES, INCLUDING DAMAGES ARISING FROM ANY TYPE OR MANNER OF COMMERCIAL, BUSINESS, OR

FINANCIAL LOSS, EVEN IF KLOWEN PARTIES HAD ACTUAL OR CONSTRUCTIVE KNOWLEDGE OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE. IN NO EVENT SHALL KLOWEN PARTIES' TOTAL LIABILITY TO YOU FOR ANY AND ALL CLAIMS ARISING FROM OR RELATING TO THIS TOS OR YOUR ACCESS TO OR USE OF (OR INABILITY TO ACCESS OR USE) THE SERVICES OR CONTENT EXCEED THE AMOUNT PAID BY YOU TO KLOWEN FOR ACCESS TO THE SERVICES WITHIN THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE DATE ON WHICH THE APPLICABLE CLAIM(S) AROSE.

(b) THE FOREGOING LIMITATIONS, EXCLUSIONS AND DISCLAIMERS SHALL APPLY REGARDLESS OF WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED UPON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE. INsofar AS APPLICABLE LAW PROHIBITS ANY LIMITATION ON LIABILITY HEREIN, THE PARTIES AGREE THAT SUCH LIMITATION WILL BE AUTOMATICALLY MODIFIED, BUT ONLY TO THE EXTENT SO AS TO MAKE THE LIMITATION COMPLIANT WITH APPLICABLE LAW. THE PARTIES AGREE THAT THE LIMITATIONS ON LIABILITIES SET FORTH HEREIN ARE AGREED ALLOCATIONS OF RISK AND SUCH LIMITATIONS WILL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

## **12. SUSPENSION AND TERMINATION**

(a) Either party may terminate this TOS and any Order at any time, provided however, that Customers must provide KLOWen with prior written notice of such termination.

(b) If you violate this TOS, KLOWen may, with or without notice to you, immediately suspend or terminate your access and use of the Services.

(c) KLOWen reserves the right at any time to modify, suspend, or discontinue the Services (or any portion thereof) with or without notice, and KLOWen shall not be liable to you or any third party for any such modification or discontinuance;

(d) Upon termination of this TOS for any reason: (i) KLOWen, in its sole discretion, may remove and discard your content and information; (ii) you will immediately cease your use of the Services; and (iii) any provision that, by its terms, is intended to survive the expiration or termination of this TOS shall survive such expiration or termination. Further, you agree that that KLOWen shall not be liable to you or any third party for any termination of your account or access to the Services.

## **13. GOVERNING LAW**

This TOS shall be governed by and construed and enforced in accordance with the United States Federal Arbitration Act, other applicable federal laws and the laws of the State of Texas, without regard to conflict of laws principles. The parties agree that neither the United Nations Convention on Contracts for the International Sale of Goods, nor the Uniform Computer Information Transaction Act (UCITA) shall apply to this TOS, regardless of the states in which the parties do business or are incorporated.

## **14. BINDING ARBITRATION AND CLASS ACTION WAIVER**

(a) ALL CLAIMS ARISING IN CONNECTION WITH THIS AGREEMENT SHALL BE RESOLVED BY FINAL AND BINDING ARBITRATION RATHER THAN IN COURT, EXCEPT THAT YOU MAY ASSERT CLAIMS IN SMALL CLAIMS COURT (DEFINED FOR THE PURPOSES OF THIS TOS AS A COURT OF LIMITED JURISDICTION THAT MAY ONLY HEAR CLAIMS NOT EXCEEDING \$5,000) IF YOUR CLAIMS ARE WITHIN THE COURT'S JURISDICTION. THERE IS NO JUDGE OR JURY IN ARBITRATION, AND COURT REVIEW OF AN ARBITRATION AWARD IS LIMITED.

(b) The arbitration shall be conducted by the American Arbitration Association (AAA) under its then-applicable Commercial Arbitration Rules or, as appropriate, its Consumer Arbitration Rules. The AAA's rules are available at <http://www.adr.org/>. Payment of all filing, administration and arbitrator fees shall be governed by the AAA's rules. The arbitration shall be conducted in the English language by a single independent and neutral arbitrator. For any hearing conducted in person as part of the arbitration, you agree that such hearing shall be conducted in Travis County, Texas or, if the Consumer Arbitration Rules apply, another location reasonably convenient to both parties with due consideration of their ability to travel and other pertinent circumstances, as

determined by the arbitrator. The decision of the arbitrator shall be final and binding. Judgment on the arbitral award may be entered in any court of competent jurisdiction.

(c) WE EACH AGREE THAT ALL CLAIMS SHALL BE RESOLVED ONLY ON AN INDIVIDUAL BASIS AND NOT IN A CLASS, CONSOLIDATED OR REPRESENTATIVE ACTION OR OTHER SIMILAR PROCESS (INCLUDING ARBITRATION). IF FOR ANY REASON A CLAIM PROCEEDS IN COURT RATHER THAN IN ARBITRATION, WE EACH WAIVE ANY RIGHT TO A JURY TRIAL AND AGREE THAT SUCH CLAIM SHALL BE BROUGHT ONLY IN A COURT OF COMPETENT JURISDICTION IN AUSTIN, TEXAS. YOU HEREBY SUBMIT TO THE PERSONAL JURISDICTION AND VENUE OF SUCH COURTS AND WAIVE ANY OBJECTION ON THE GROUNDS OF VENUE, FORUM *NON-CONVENIENS* OR ANY SIMILAR GROUNDS WITH RESPECT TO ANY SUCH CLAIM.

(d) Notwithstanding anything to the contrary, you and KLOWen may seek injunctive relief and any other equitable remedies from any court of competent jurisdiction to protect its intellectual property rights, whether in aid of, pending, or independently of the resolution of any dispute pursuant to the arbitration procedures set forth in this Section 13.

(e) If KLOWen implements any material change to this Section 13, such change shall not apply to any Claim for which you provided written notice to KLOWen before the implementation of the change.

#### **15. LEGAL COMPLIANCE**

You represent and warrant that you will comply with all applicable foreign, federal, state, and local laws, rules and regulations, including without limitation, U.S. export laws and import and use laws of the country where Licensed Material is delivered or used and you are not: (a) located in a country that is subject to a U.S. Government embargo, or designated by the U.S. Government as a “terrorist supporting” country; and (b) listed on any U.S. Government list of prohibited or restricted parties, including the Specially Designated Nationals List.

#### **16. U.S. GOVERNMENT ENTITIES**

This section applies to access to or use of the Services by a branch or agency of the United States Government. The Services includes “commercial computer software” and “commercial computer software documentation” as such terms are used in 48 C.F.R. 12.212 and qualifies as “commercial items” as defined in 48 C.F.R. 2.101. Such items are provided to the United States Government: (a) for acquisition by or on behalf of civilian agencies, consistent with the policy set forth in 48 C.F.R. 12.212; or (b) for acquisition by or on behalf of units of the Department of Defense, consistent with the policies set forth in 48 C.F.R. 227.7202-1 and 227.7202-3. The United States Government shall acquire only those rights set forth in this TOS with respect to the such items, and any access to or use of the Services by the United States Government constitutes: (i) agreement by the United States Government that that such items are “commercial computer software” and “commercial computer software documentation” as defined in this section; and (ii) acceptance of the rights and obligations herein.

#### **17. PROCEDURE FOR MAKING CLAIMS OF COPYRIGHT INFRINGEMENT**

If you believe that your work has been made available through the Services in a way that constitutes copyright infringement, please provide KLOWen’s Agent for Notice of Copyright Claims the following information: (a) a physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed; (b) a description of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works are covered by a single notification, a representative list of such works; (c) a description of the material that you claim is infringing and where that material may be accessed within the Services; (d) your address, telephone number and email address; (e) a statement by you that you have a good-faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent or the law; and (f) a statement from you that the information in the notification is accurate and, under penalty of perjury, that you are authorized to act on behalf of the owner of an exclusive right that is allegedly infringed. If you believe in good faith that a notice of copyright infringement has been wrongly filed against you, please contact KLOWen’s Agent for Notice of Copyright Claims. KLOWen’s Agent for Notice of Copyright Claims can be reached as follows:

Agent for Notice of Copyright Claims:  
Customer Experience  
3503 Wild Cherry Road, Bldg. 15

Lakeway, Texas 78738  
1-877-347-1211  
info@KLOWenBraces.com

**18. CALIFORNIA USERS & RESIDENTS**

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 such unit in writing at 1625 North Market Blvd., Suite N 112, Sacramento, CA 95834, or by telephone at (800) 952-5210.

**19. GENERAL PROVISIONS**

This TOS constitutes the entire agreement between you and KLOWen concerning your access to and use of the Services. It supersedes all prior and contemporaneous oral or written negotiations and agreements between you and KLOWen with respect to such subject matter. In the event of any conflict between or among this TOS and any end user license agreement, privacy policy or usage guidelines to which this TOS refers, the terms and conditions of this TOS shall take precedence and govern. This TOS may not be amended by you except in a writing executed by you and an authorized representative of KLOWen. Except as otherwise expressly provided in this TOS, there shall be no third-party beneficiaries to this TOS. For the purposes of this TOS, the words "such as," "include," "includes" and "including" shall be deemed to be followed by the words "without limitation." You may not assign or delegate any right or obligation under this TOS without the prior written consent of KLOWen. The failure of KLOWen to exercise or enforce any right or provision of this TOS shall not constitute a waiver of such right or provision. If any provision of this TOS is held to be invalid or unenforceable under applicable law, then such provision shall be construed, limited, modified or, if necessary, severed to the extent necessary to eliminate its invalidity or unenforceability, without in any way affecting the remaining parts of this TOS. Any prevention of or delay in performance by KLOWen hereunder due to labor disputes, acts of god, failure of the Internet, governmental restrictions, enemy or hostile governmental action, fire or other casualty or other causes beyond its reasonable control shall excuse the performance of its obligations for a period equal to the duration of any such prevention or delay.