

ODR.COM SUBSCRIPTION AGREEMENT TERMS AND CONDITIONS

JUNE 2023

1. DEFINITIONS

1.1 **"Authorized Dispute"** means a dispute that falls within the authorized dispute type or types, such as the nature of the dispute and/or the nature of the parties to the dispute, specified in the Quotation and in Appendix A.

1.2 **"Authorized User"** means one of the following persons who has been assigned a unique username-password combination to access and use the Caseload Manager, and registered online to access and use the Caseload Manager, but only when associated with filing or processing an Authorized Dispute: (i) an employee or authorized contractor of Customer, (ii) parties, or counsel for parties, to the dispute, (iii) a third party neutral provided or requested by Customer, or (iv) an agent or authorized representative of a party to the dispute.

1.3 **"Case Data"** means data pertaining to a specific Authorized Dispute before Customer and entered into the Caseload Manager by an Authorized User. Case Data includes, but is not limited to, personally identifiable information about parties and individuals involved in the proceedings administered by Customer; proceeding-specific documentation and information uploaded to the Caseload Manager by Authorized Users; orders, rulings, and Customer's proceeding-specific internal notes; or communications between or among its employees, parties, and third party neutrals.

1.4 **"Configuration Data"** means data entered by Customer or by ODR.COM on Customer's behalf in order to configure Caseload Manager to support Customer. Configuration Data includes but is not limited to the establishment of user accounts, customization of screen layouts, and custom data field definitions. Configuration Data excludes Usage Data and Case Data.

1.5 **"Fees"** means the fees described in any Quotation.

1.6 **"Implementation Services"** means the services performed by ODR.COM to configure and rollout Caseload Manager to Customer and Authorized Users, as described in the Quotation, and Appendix A or a proposal incorporated into the a Quotation and/or Appendix A.

1.7 **"Intellectual Property Rights"** means patent rights (including, without limitation, patent applications and disclosures), copyrights, trademarks, trade secrets, moral rights, know-how, and any other intellectual property rights recognized in any country or jurisdiction in the world.

1.8 **"Project Plan"** means the plan set forth in Appendix A and/or a proposal incorporated into a the Quotation.

1.9 **"Software"** means any ODR.COM or third-party software used by ODR.COM to provide the Implementation Services and/or Caseload Manager.

1.10 **"Caseload Manager"** means the online services provided by ODR.COM that provide online dispute resolution, including but not limited to dispute intake, facilitated negotiation, case management, mediation, and arbitration. The specific features are described in the Quotation and in Appendix A. Caseload Manager will be provided through the website located at a URL to be provided to Customer (the **"URL"**). ODR.COM may change the URL from time to time upon no less than ten (10) days notice to Customer.

1.11 **"Term"** means the term of this Agreement as defined in **Section 9.1**.

1.12 **"Quotation"** means the first quote detailed in Page 1 of this Agreement, and any subsequent quote, associated with this Agreement that includes one or more ODR.com software-as-a-service product subscription(s), consulting services, and/or setup fees. Each Quotation is incorporated into this Agreement by reference, along with any associated proposal, software platform description (for example – Appendix A), or Project Plan.

1.13 **"Usage Data"** means metadata and raw data accumulated by ODR.COM software, including but not limited to Authorized User usage of the Resolution Software modules, frequency of access, proceeding duration, aggregate uploaded information volume, and information tracked or trackable through cookies or similar methods in order to provide Authorized Users with the services requested of the software.

2. PROVISION OF CASELOAD MANAGER

2.1 **Implementation Services.** Subject to Customer's cooperation and assistance in accordance with **Section 4.1**, ODR.COM will provide any Implementation Services as described in the Project Plan, subject to the agreement of the parties.

2.2 **Caseload Manager.** Subject to Customer's compliance with the terms and conditions of this Agreement, commencing on the launch date set forth in the Project Plan or on the first Quotation and continuing throughout the remainder of the Term, ODR.COM will make an instance of Caseload Manager available to Customer. Customer and Authorized Users may access and use the Caseload Manager solely to process Authorized Disputes (the **"Permitted Purposes"**).

2.3 Restrictions. Customer shall not attempt to interfere with or disrupt Caseload Manager or the Software or attempt to gain access to any systems or networks that connect thereto (except as required to access and use Caseload Manager). Customer shall not allow access to or use of Caseload Manager by anyone other than Authorized Users. Customer shall not: (a) copy, modify or distribute any portion of Caseload Manager or Software; (b) rent, lease, or provide access to Caseload Manager on a time-share or service bureau basis; or (c) transfer any of its rights hereunder (except as specified in **Section 13.8**). In addition, Customer agrees not to disassemble, decompile or reverse engineer Caseload Manager or allow any third party to do so, except to the extent such restrictions are prohibited by law.

2.4 Acceptable Use Policies. Customer acknowledges and agrees that ODR.COM does not monitor or police communications or data transmitted through Caseload Manager and that ODR.COM shall not be responsible for the content of any such communications or transmissions. Customer shall use Caseload Manager exclusively for the Permitted Purposes, consistent with all applicable laws, regulations and the rights of others. Customer shall not use Caseload Manager to transmit any bulk unsolicited commercial communications. Customer shall keep confidential and not disclose to any third parties, and shall ensure that Customer-affiliated Authorized Users keep confidential and do not disclose to any third parties, any user identifications, account numbers and account profiles.

2.5 Data Maintenance and Backup Procedures. ODR.COM shall use commercially reasonable procedures to store the Case Data. In the event of any loss or corruption of Case Data, ODR.COM shall use commercially reasonable efforts to restore the lost or corrupted Case Data from the latest backup maintained by ODR.COM in accordance with ODR.COM's procedures. ODR.COM shall not be responsible for any loss, destruction, alteration, unauthorized disclosure or corruption of Case Data caused by any third party. ODR.COM'S EFFORTS TO RESTORE LOST OR CORRUPTED CASE DATA PURSUANT TO THIS **SECTION 2.5** SHALL CONSTITUTE ODR.COM'S SOLE LIABILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY IN THE EVENT OF ANY LOSS OR CORRUPTION OF CASE DATA.

2.6 Minimum Site Performance. During the Term, Caseload Manager will meet the performance standards set forth in its service level standards as set forth on the ODR.COM website, which ODR.COM may change from time to time.

3. NEW SERVICES.

3.1 If Customer requests ODR.COM to perform any services that are different from or in addition to the Implementation Services and making available Caseload Manager, as set forth herein ("**New Services**"), and ODR.COM is willing to provide such different or additional services, then ODR.COM shall provide a Quotation to Customer listing the fees for such requested New Services ("**New Service Fees**"). If

Customer accepts such Quotation in writing within fifteen (15) days: (a) ODR.COM shall perform the New Services; (b) the Fees shall be adjusted to reflect the New Service Fees; and (c) such New Services shall be deemed Implementation Services and/or services performed in connection with making available Caseload Manager under this Agreement, as appropriate.

4. CUSTOMER OBLIGATIONS

4.1 Cooperation and Assistance. As a condition to ODR.COM's obligations hereunder, Customer shall at all times: (a) provide ODR.COM with good faith cooperation and access to such information, facilities, and equipment as may be reasonably required by ODR.COM in order to provide the Implementation Services and make available Caseload Manager, including, but not limited to, providing business requirements, security access, support for interviews and specification review and approval, and software interfaces to Customer's business applications; (b) provide such personnel assistance as may be reasonably requested by ODR.COM from time to time; and (c) carry out in a timely manner all other Customer responsibilities set forth in this Agreement. In the event of any delay in Customer's performance of any of the obligations set forth in (a), (b) or (c), or any other delays caused by Customer, ODR.COM may adjust the milestones and launch date set forth in the Project Plan, Appendix A or Quotation(s) as reasonably necessary to account for such delays.

4.2 Marketing Support. Customer shall comply with reasonable requests of ODR.COM to support public relations efforts pertaining to Caseload Manager, which efforts may include: (a) a press release highlighting Customer's purchase or use of Caseload Manager (including any return on investment attained through Caseload Manager); (b) participation in targeted press and analyst interviews highlighting benefits of implementing Caseload Manager; and (c) participation in customer case studies developed by ODR.COM and used on the ODR.COM web site and other collateral. Customer grants to ODR.COM a non-exclusive, non-transferable (except as permitted under **Section 13.8**), limited right to use the Customer name, trademarks, and logos (collectively, the "**Customer Marks**") in the production of marketing materials, provided that such use is in accordance with Customer's trademark and logo use guidelines that Customer provides to ODR.COM. ODR.COM will use its commercially reasonable efforts to cooperate with Customer in monitoring use of the Customer Marks. All goodwill developed from such use shall be solely for the benefit of Customer.

4.3 Enforcement. Customer shall cause any Customer-affiliated Authorized Users to comply with terms and conditions at least as protective of Caseload Manager as the terms and conditions of this Agreement. ODR.COM may suspend or terminate any Authorized User's access to

Caseload Manager upon notice to Customer in the event that ODR.COM reasonably determines that such Authorized User has violated the terms and conditions of this Agreement or any Terms of Service to which an Authorized User agrees at registration. ODR.COM will notify Customer in the event of a suspension or termination of any Authorized User and, where practicable, ODR.COM will provide Customer with prior notice and an opportunity to cure. Customer shall be liable for any use of Caseload Manager in violation of any terms and conditions of this Agreement by any Customer-affiliated Authorized User.

4.4 Telecommunications and Internet Services. Customer acknowledges and agrees that Customer's and its Authorized Users' use of Caseload Manager is dependent upon access to telecommunications and Internet services. Customer shall be solely responsible for acquiring and maintaining all telecommunications and Internet services and other hardware and software required to access and use Caseload Manager, including, without limitation, any and all costs, fees, expenses, and taxes of any kind related to the foregoing. ODR.COM shall not be responsible for any loss or corruption of data, lost communications, or any other loss or damage of any kind arising from any such telecommunications and Internet services.

4.5 Case Volume Monitoring. Customer agrees that the Quotation(s) provided by ODR.COM are tied to a specified case volume. ODR.COM shall monitor volume of Authorized Cases on an ongoing basis and report to Customer if Customer's total case volume nears the maximum provided in its Quotation. Customer may request that ODR.COM suspend new registrations to the Caseload Manager in order to ensure that Customer's case volume does not exceed the maximum permitted under the applicable Quotation. If Customer's case volume exceeds the maximum, Customer shall pay ODR.COM additional fees representing the prorated difference between the quoted pricing tier and the next hirer pricing tier, based on its additional usage of the Caseload Manager. Case volumes shall be calculated in increments of 1,000. ODR.COM does not warrant that it can support a case volume materially greater than that specified in the Quotation if Customer does not provide it with advanced notice of such increase.

5. FEES; EXPENSES; TAXES

5.1 Fees. In consideration for ODR.COM providing the Implementation Services and making available Caseload Manager, Customer shall pay to ODR.COM the Fees, in accordance with the terms set forth in each Quotation. Except as provided in **Section 4.5**, the parties are in agreement that the fees, and the case volume estimates on

which those fees are based, as set out in each Quotation, shall only be amended by agreement between the parties.

5.2 Other Expenses. Customer shall reimburse ODR.COM for all actual and reasonable expenses (including, but not limited to, travel, lodging, shipping and long distance communication) incurred by ODR.COM in performing the Implementation Services (collectively, "**Expenses**").

5.3 Invoices; Payment; Late Payment. ODR.COM shall invoice Customer on the first day of the month in which the annual subscription is due, for all Fees, Expenses and applicable Taxes (as defined in **Section 5.4**), and including any related interest and/or penalties), due in that month pursuant to the applicable Quotation(s). This invoice is due on Net 30 terms from the date that is generated by ODR.COM. Interest shall accrue on past due amounts at the rate of one and one half percent (1.5%) per month, but in no event greater than the highest rate of interest allowed by law, calculated from the date such amount was due until the date that payment is received by ODR.COM. Customer shall reimburse ODR.COM for the reasonable costs of collection for unpaid and past due invoices, including reasonable fees and expenses of attorneys. ODR.COM retains the right to suspend the services to the Customer if an invoice to Customer remains outstanding for more than sixty (60) days.

5.4 Taxes. All amounts and fees stated or referred to in this Agreement are exclusive of taxes, duties, levies, tariffs, and other governmental charges (including, without limitation, VAT) (collectively, "**Taxes**"). Customer shall be responsible for payment of all Taxes and any related interest and/or penalties resulting from any payments made hereunder, other than any taxes based on ODR.COM's net income.

6. OWNERSHIP

6.1 Program Ownership. All ODR.COM software, programs, specifications and other proprietary information with respect thereto, and all copies thereof, are proprietary to ODR.COM and all right, title and interest thereto remains exclusively in ODR.COM. Except for any rights and licenses granted to Customer hereunder, all applicable rights to patents, copyrights, trademarks and trade secrets owned or held by ODR.COM are and shall remain proprietary to ODR.COM.

6.2 Data Ownership. With regard to the data stored in or run through Caseload Manager, Customer, or its Authorized Users, own all Case Data, and Customer owns all Configuration Data. ODR.COM owns all Usage Data.

6.3 License. Customer grants ODR.COM a perpetual, royalty-free, worldwide license to use the Case Data and Configuration Data to enhance its software, programs, and services, provided that ODR.COM uses such information only in an aggregated and anonymized form. This license is

subject to ODR.COM's ongoing obligation to comply with all applicable laws and regulations governing personally identifiable information and the provisions of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") as amended from time to time including Sections 13400 through 13424 of the Health Information Technology for Economic Clinical Health Act (the "HITECH Act") and the corresponding Standards for Privacy of Individually Identifiable Health Information (the "Privacy Rule"), Security Standards for the Protection of Electronic Protected Health Information (the "Security Rule"), and the Notification in the Case of Breach of Unsecured Protected Health Information (the "Breach Notification Rule").

6.4 Reservation of Rights. Except for the rights and licenses granted to ODR.COM hereunder, all applicable rights to patents, copyrights, trademarks and trade secrets owned or held by Customer are and shall remain proprietary to Customer.

7. CONFIDENTIALITY AND NON-CIRCUMVENTION

7.1 Definition. By virtue of this Agreement, the parties may have access to each other's Confidential Information. "**Confidential Information**," as used in this Agreement, means any written, machine-reproducible and/or visual materials that are clearly labeled as proprietary, confidential, or with words of similar meaning, and all information that is orally or visually disclosed, if not so marked, if it is identified as proprietary or confidential at the time of its disclosure or in a writing provided within thirty (30) days after disclosure, and any information of any nature described in this Agreement as confidential. ODR.COM Confidential Information includes, without limitation, the Caseload Manager and any Software whether in source or executable code, documentation, nonpublic financial information, pricing, business plans, techniques, methods, processes, and the results of any performance tests of the Caseload Manager or the Software. Case Data is the Confidential Information of Customer. The terms and conditions of this Agreement shall be deemed the Confidential Information of both parties and neither party shall disclose such information except to such party's advisors, accountants, attorneys, investors (and prospective investors), and prospective acquirers as have a reasonable need to know such information, provided that any such third parties shall, before they may access such information, either (a) execute a binding agreement to keep such information confidential or (b) be subject to a professional obligation to maintain the confidentiality of such information. Notwithstanding the provisions of this Section 8, ODR.COM shall be entitled to use the information licensed by Customer pursuant to Section 7.3 for the licensed purposes, but shall otherwise maintain the confidentiality of such information.

7.2 Exclusions. Confidential Information shall not include information that: (a) is or becomes publicly known through no act or omission of the receiving party; (b) was in the receiving party's lawful possession prior to the disclosure; (c) is rightfully disclosed to the receiving party by a third party without restriction on disclosure; (d) is independently developed by the receiving party, which independent development can be shown by written evidence; or € Usage Data.

7.3 Use and Nondisclosure. During the Term and for so long as the Confidential Information retains its confidential, proprietary or trade secret character, neither party shall make the other's Confidential Information available to any third party or use the other's Confidential Information for any purposes other than exercising its rights and performing its obligations under this Agreement. Each party shall take all reasonable steps to ensure that the other's Confidential Information is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement, but in no event will either party use less effort to protect the Confidential Information of the other party than it uses to protect its own Confidential Information of like importance. Each party will ensure that any agents or subcontractors that are permitted to access any of the other's Confidential Information are legally bound to comply with the obligations set forth herein. Notwithstanding the foregoing, Confidential Information may be disclosed as required by any governmental agency, provided that before disclosing such information the disclosing party must provide the non-disclosing party with sufficient advance notice of the agency's request for the information to enable the non-disclosing party to exercise any rights it may have to challenge or limit the agency's authority to receive such Confidential Information. Customer understands and agrees that ODR.COM may use, analyze, publish and otherwise exploit the Case Data and the Configuration Data, in aggregated and non-identifying form only, in connection with analyzing use of, promoting or otherwise improving the Caseload Manager.

7.4 The Parties agree that ODR.COM and all its affiliated companies, successors in interest or assigns shall not at any time prior to the expiration of one (1) year from the date of termination of this Agreement, directly or indirectly, during or after the term of this Agreement, enter into any agreement, association or partnership with sources not their own and which have been made available to them through this Agreement by the Customer, without the express written permission of the Customer. ODR.COM further agrees not to be a lender, investor, distributor, consultant, etc. to any company, person or organization to any of its affiliated companies, successors in interest or assigns, either directly or indirectly, introduced to it by the Customer, without prior written consent of the Customer.

8. WARRANTY

8.1 Warranty for Caseload Manager. ODR.COM warrants that Caseload Manager will provide the functionality set forth in each Quotation and Appendix A.

8.2 Disclaimer. Customer assumes sole responsibility and liability for results obtained from the use of Caseload Manager and for conclusions drawn from such use. ODR.COM shall have no liability for any claims, losses, or damage caused by errors or omissions in any information provided to ODR.COM by Customer in connection with Caseload Manager or any actions taken by ODR.COM at Customer's direction. ODR.COM shall have no liability for any claims, losses or damages arising out of or in connection with Customer's or any Authorized User's use of any third-party products, services, software or web sites that are accessed via links from within Caseload Manager. EXCEPT AS EXPRESSLY PROVIDED IN **SECTION 8.1**, ODR.COM MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, IN CONNECTION WITH THIS AGREEMENT, THE IMPLEMENTATION SERVICES OR THE CASELOAD MANAGER. WITHOUT LIMITING THE FOREGOING, EXCEPT AS EXPRESSLY PROVIDED IN **SECTION 8.1**, ODR.COM DISCLAIMS ANY WARRANTY THAT THE CASELOAD MANAGER WILL BE ERROR FREE OR UNINTERRUPTED OR THAT ALL ERRORS WILL BE CORRECTED. ODR.COM FURTHER DISCLAIMS ANY AND ALL WARRANTIES WITH RESPECT TO THE CASELOAD MANAGER AS TO MERCHANTABILITY, ACCURACY OF ANY INFORMATION PROVIDED, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. ODR.COM FURTHER DISCLAIMS ANY AND ALL WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED FROM ODR.COM OR ELSEWHERE SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THIS AGREEMENT. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES IN CERTAIN CIRCUMSTANCES. ACCORDINGLY, SOME OF THE LIMITATIONS SET FORTH ABOVE MAY NOT APPLY.

9. TERM AND TERMINATION

9.1 Term. This Agreement shall commence on the Effective Date and shall continue for the period of one (1) year thereafter (the "**Initial Term**"), unless terminated earlier as provided in this Agreement. This Agreement shall automatically renew for subsequent one-year periods, unless either party notifies the other in writing of its intent not to renew at least ninety (90) days prior to the end of the then-current term. The Initial Term and renewal periods are collectively the "**Term**".

9.2 Termination for Cause. Either party may terminate this Agreement upon written notice if the other party

materially breaches this Agreement and fails to correct the breach within thirty (30) days following written notice specifying the breach; provided that the cure period for any default with respect to payment shall be five (5) business days.

9.3 Rights and Obligations Upon Expiration or Termination. Upon expiration or termination of this Agreement, Customer's and Authorized Users' right to access and use Caseload Manager shall immediately terminate, Customer and its Authorized Users shall immediately cease all use of Caseload Manager, and each party shall return and make no further use of any Confidential Information, materials, or other items (and all copies thereof) belonging to the other party. Notwithstanding the foregoing, Customer and its Authorized Users may continue to use Caseload Manager, subject to written notice and payment of the Fees described in each Quotation, in order to resolve any disputes that were opened prior to any expiration or termination for a period not to exceed forty-five (45) days from the date of expiration or termination (the "**Completion Period**"). In the event that Customer utilizes the Completion Period, the obligations in this **Section 9.3** related to return of Confidential Information and Case Data will apply after the end of the Completion Period, as applicable. ODR.COM may destroy or otherwise dispose of any Case Data in its possession unless ODR.COM receives, no later than ten (10) days after the effective date of the expiration or termination of this Agreement (or the end of the Completion Period, if applicable), a written request for the delivery to Customer of the then-most recent back-up of the Case Data. ODR.COM will use reasonable efforts to deliver the back up to Customer within thirty (30) days of its receipt of such a written request. Customer shall pay all reasonable expenses incurred by ODR.COM in returning Case Data to Customer. Also upon expiration or termination of this Agreement, ODR.COM shall cease use of the Customer Marks (as defined in **Section 4.2**); provided, however, that (a) ODR.COM shall have a reasonable time to remove the Customer Marks from promotional materials, (b) ODR.COM shall be entitled to exhaust materials printed during the Term that include the Customer Marks, and (c) ODR.COM shall not be required to remove any such printed materials from circulation.

9.4 Survival. The rights and obligations of ODR.COM and Customer contained in **Sections 5** (Fees, Expenses and Taxes), **6** (Ownership), **7** (Confidentiality), **9.3** (Rights and Obligations Upon Expiration or Termination), **9.4** (Survival), **10** (Indemnification), **11** (Limitation of Liability), **12** (Acknowledgement), and **13** (General) shall survive any expiration or termination of this Agreement.

10. INDEMNIFICATION

10.1 Indemnification by Customer. Customer shall defend (or settle), indemnify and hold harmless ODR.COM, its officers, directors, employees, and any affiliates or subsidiaries, from and against any liabilities, losses, damages and expenses, including court costs and reasonable attorneys' fees, arising out of or in connection with any third-party claim that: (i) a third party has suffered injury, damage or loss resulting from Customer's or a Customer-affiliated Authorized User's use of the Caseload Manager (other than any claim for which ODR.COM is responsible under **Section 10.2**); or (ii) Customer or any Customer-affiliated Authorized User has used Caseload Manager in a manner that violates **Sections 2.2** or **2.3** of this Agreement. Customer's obligations under this **Section 10.1** are contingent upon: (a) ODR.COM providing Customer with prompt written notice of such claim; (b) ODR.COM providing reasonable cooperation to Customer, at Customer's expense, in the defense and settlement of such claim; and (c) Customer having sole authority to defend or settle such claim.

10.2 Indemnification by ODR.COM. ODR.COM shall defend (or settle), indemnify and hold harmless Customer, its officers, directors and employees, from and against any liabilities, losses, damages and expenses, including court costs and reasonable attorneys' fees, arising out of a claim that the Caseload Manager infringes or misappropriates the Intellectual Property Rights of any third party, and will pay any costs, damages and reasonable attorneys' fees attributable to such claim that are awarded against Customer. ODR.COM's obligations under this **Section 10.2** are contingent upon: (a) Customer providing ODR.COM with prompt written notice of such claim; (b) Customer providing reasonable cooperation to ODR.COM, at ODR.COM's expense, in the defense and settlement of such claim; and (c) ODR.COM having sole authority to defend or settle such claim. In the event that ODR.COM's right to provide Caseload Manager is enjoined or in ODR.COM's reasonable opinion is likely to be enjoined, ODR.COM may obtain the right to continue providing Caseload Manager, replace or modify the allegedly infringing components of Caseload Manager so that they become non-infringing with materially similar functionality, or, if such remedies are not reasonably available, terminate this Agreement without liability to Customer. THE FOREGOING STATES THE ENTIRE OBLIGATION OF ODR.COM AND ITS LICENSORS WITH RESPECT TO ANY ALLEGED OR ACTUAL INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS BY CASELOAD MANAGER. ODR.COM shall have no liability under this **Section 10.2** to the extent that any third-party claims described herein are based on use of Caseload Manager in a manner that violates this Agreement or the instructions given to Customer by ODR.COM.

11. LIMITATION OF LIABILITY. EXCEPT FOR LIABILITY ARISING FROM A BREACH OF **SECTIONS 2.2** OR **2.3** OR **SECTION 7**, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INCIDENTAL, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF INCOME, DATA, PROFITS, REVENUE OR BUSINESS INTERRUPTION, OR COST OF SUBSTITUTE SERVICES, OR OTHER ECONOMIC LOSS, WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND WHETHER ANY CLAIM FOR RECOVERY IS BASED ON THEORIES OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR OTHERWISE. NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS AGREEMENT, IN NO EVENT SHALL ODR.COM'S AGGREGATE LIABILITY TO CUSTOMER AND ANY THIRD PARTY IN CONNECTION WITH THIS AGREEMENT OR CUSTOMER'S ACCESS TO AND USE OF CASELOAD MANAGER EXCEED THE TOTAL MONTHLY SUBSCRIPTION FEES PAID BY CUSTOMER IN THE TWELVE-MONTH PERIOD PRECEDING THE CLAIM OR ACTION, REGARDLESS OF THE FORM OR THEORY OF THE CLAIM OR ACTION.

12. ACKNOWLEDGEMENT. The parties acknowledge that the limitations and exclusions contained in **Section 11** and elsewhere in this Agreement have been the subject of negotiation between the parties and represent the parties' agreement based upon the perceived level of risk associated with their respective obligations under this Agreement, and the payments made hereunder. Without limiting the generality of the foregoing, the parties acknowledge and agree that (a) the provisions hereof that limit liability, disclaim warranties or exclude consequential damages or other damages or remedies shall be severable and independent of any other provisions and shall be enforced as such, regardless of any breach hereunder, and (b) all limitations of liability, disclaimers of warranties, and exclusions of consequential damages or other damages or remedies shall remain fully valid, effective and enforceable in accordance with their respective terms, even under circumstances that cause an exclusive remedy to fail of its essential purpose.

13. GENERAL

13.1 Governing Law. This Agreement and all matters arising out of or relating to this Agreement shall be governed by the laws of the State of California, without regard to its conflict of law provisions.

13.2 Dispute Resolution. Any dispute or claim in law or equity arising out of or in connection with this Agreement, including the breach, termination or validity thereof, shall, at the written election of either party, be decided by a single arbitrator in neutral binding arbitration, in accordance with the International Institute for Conflict Prevention & Resolution Rules for Non-Administered

Arbitration (with the seat of arbitration in California, and English as the language of arbitration), and not by court action except as provided by California law for judicial review of arbitration proceedings. The Federal Arbitration Act, 9 U.S.C. §§1 et seq., shall govern the arbitration and judgment upon any award made in such arbitration may be entered and enforced in any court of competent jurisdiction.

13.3 Waiver. The waiver by either party of any default or breach of this Agreement shall not constitute a waiver of any other or subsequent default or breach.

13.4 Notices. All notices, including notices of address change, required to be sent hereunder shall be in writing and shall be sent to the addresses set forth in the most recent Quotation or delivered in person. The notices shall be deemed to have been given upon: (a) the date actually delivered in person; (b) the day after the date sent by overnight courier; or (c) three (3) days following the date such notice was mailed by first class mail. Notices may be confirmed by email or fax.

13.5 Severability. In the event any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect.

13.6 Force Majeure. Neither party shall be liable hereunder by reason of any failure or delay in the performance of its obligations hereunder (except for the payment of money) on account of events beyond the reasonable control of such party, which may include without limitation denial-of-service attacks, strikes, shortages, riots, insurrection, fires, flood, storm, explosions, acts of God, war, terrorism, governmental action, labor conditions, earthquakes and material shortages (each a "**Force Majeure Event**"). Upon the occurrence of a Force Majeure Event, the non-performing party will be excused from any further performance of its obligations effected by the Force Majeure Event for so long as the event continues and such party continues to use commercially reasonable efforts to resume performance.

13.7 Compliance with Laws. Each party agrees to comply with all applicable laws and regulations with respect to its activities hereunder, including, but not limited to, any export laws and regulations of the United States.

13.8 Relationship Between the Parties. Nothing in this Agreement shall be construed to create a partnership, joint venture or agency relationship between the parties. Neither party will have the power to bind the other or to incur obligations on the other's behalf without such other party's prior written consent.

13.9 Assignment/Successors. Customer may not assign or transfer this Agreement, by operation of law or otherwise,

without ODR.COM's prior written consent. Any attempt by you to assign or transfer this Agreement, without such consent, will be null and of no effect. ODR.COM may assign or transfer this Agreement, at its sole discretion, without restriction. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, their successors and permitted assigns.

13.10 Entire Agreement. This Agreement together with the exhibits hereto constitutes the complete and exclusive agreement between the parties concerning its subject matter and supersedes all prior or contemporaneous agreements or understandings, written or oral, concerning the subject matter of this Agreement. This Agreement may not be modified or amended except in a writing signed by a duly authorized representative of each party.

13.11 Non-Exclusive Remedies. Except as set forth in **Sections 2.5 and 10.2**, the exercise by either party of any remedy under this Agreement will be without prejudice to its other remedies under this Agreement or otherwise.

13.12 Equitable Relief. Each party acknowledges that a breach by the other party of any confidentiality or proprietary rights provision of this Agreement may cause the non-breaching party irreparable damage, for which the award of damages would not be, adequate compensation. Consequently, the non-breaching party may institute an action to enjoin the breaching party from any and all acts in violation of those provisions, which remedy shall be cumulative and not exclusive, and a party may seek the entry of an injunction enjoining any breach or threatened breach of those provisions, in addition to any other relief to which the non-breaching party may be entitled at law or in equity.

13.13 No Third-Party Beneficiaries. This Agreement is intended for the sole and exclusive benefit of the signatories and is not intended to benefit any third party. Only the parties to this Agreement may enforce it.

13.14 Counterparts. This Agreement may be executed in counterparts, each of shall constitute an original, and all of which shall constitute one and the same instrument.

13.15 Headings. The headings in this Agreement are for the convenience of reference only and have no legal effect.