

## EQ Care

### Terms and Conditions

These are the terms and conditions (the “EQ Care Terms and Conditions”) under which Equinnox Virtual Clinic Corporation (“EQ Care”) will provide services to the entity (“Client”) named in the EQ Care master application form (“Master Application Form”) to which these EQ Care Terms and Conditions are attached. These EQ Care Terms and Conditions, together with the Master Application Form, constitute “The Agreement.” EQ Care and Client are each referred to as a “Party,” and collectively as “Parties.”

- 1. Scope.** These EQ Care Terms and Conditions are the terms and conditions under which EQ Care agrees to provide virtual medical services described in Schedule A (the “Services”) to certain of Client’s members (“Eligible Members”) and their dependents (“Eligible Dependents”), collectively and individually referred to as “Members,” in accordance with the information provided by Client in the Master Application Form. Each Member will also be required to accept terms and conditions of use upon online registration with EQ Care. In the event of any inconsistency between these EQ Care Terms and Conditions and such terms of use, these EQ Care Terms and Conditions shall prevail.

Client acknowledges and agrees to the following and further acknowledges that EQ Care is relying upon such agreement in providing the EQ Care Services:

- a) EQ Care is a medical consultation services company and, as such, provides access to care through its network of medical practitioners. The Services do not create or otherwise give rise to a physician-patient relationship between any EQ Care medical professional and a Member. All treatment decisions are made by each Member in consultation with the EQ Care network of medical practitioners and if requested, in consultation with the Member’s family physician(s).
- b) An EQ Care medical practitioner may be unable to provide The Services to a Member if EQ Care does not have the data required including, without limitation, medical records and related test reports, radiology, and pathology, or if the EQ Care medical practitioner does not have the authorizations and/or consents it deems necessary to obtain such data.
- c) EQ Care may refuse to provide or may terminate the provision of The Services to a Member if EQ Care determines, in EQ Care’s reasonable discretion, that Member’s use of The Services is or was for a purpose other than to better Member’s health outcome in relation to Member’s treatment by the treating physician (e.g., for litigation purposes).
- d) EQ Care does not and will not have any authority to make benefit determinations with respect to any Member, and any such decisions will be made by the Client in accordance with Client’s benefit programs.
- e) Use of the Services by Members and their dependents is a condition of participation under Client’s benefits program(s) of insurance.

- f) RWAM Insurance Administrators Inc. will be responsible for providing EQ Care with accurate lists of Eligible Members promptly after any change so that EQ Care may perform eligibility checks prior to providing Services.
- g) EQ Care will have no power or authority on behalf of Client to waive, alter, or modify, any of the terms or conditions of any benefit program provided by the Client to Members.

## 2. Intellectual Property Rights.

**2.1** Client acknowledges and agrees that EQ Care shall solely own and shall retain all right, title, and interest in and to the "EQ Care IP" as hereinafter defined:

- a) All EQ Care trade-marks and service marks including, without limitation, Equinoxe Life Care;
- b) All EQ Care logos;
- c) All EQ Care domain names including, without limitation, [www.eqcare.com](http://www.eqcare.com) ;
- d) All EQ Care works protected by copyright (including all software, work flows, forms, processes, Virtual Clinic content and other content that is provided or created by EQ Care); and
- e) All EQ Care proprietary methods, trade secrets, inventions, and/or other confidential and proprietary information of EQ Care.

In addition, EQ Care shall have a royalty-free, worldwide, perpetual license to use and to incorporate into the EQ Care IP any suggestions, ideas, enhancement requests, feedback, or recommendations provided by Client or its affiliates, employees, agents, or Members with respect to the Services.

Client acknowledges and agrees that except as may be specifically granted by EQ Care in this Agreement, Client shall acquire no rights or interest in or to the EQ Care IP.

**2.2** During the Term, EQ Care grants Client and the Members a limited license to utilize the EQ Care trade-marks solely in connection with the promotion (by the Client) and use (by the Members) of the Services and strictly in accordance with the EQ Care trade-mark usage policies as set forth at [www.eqcare.com](http://www.eqcare.com) and [www.equinoxlifecare.com](http://www.equinoxlifecare.com) , as such policies may be amended from time to time by EQ Care. Client acknowledges these trade-mark usage policies and agrees to comply with them at all times during the Term. The Services will not be re-branded by Client but instead will reference the delivery of such Services by EQ Care. Before Client publishes or disseminates any materials to Members promoting the Services, Client will deliver a sample of the materials to EQ Care for prior approval, which will not be unreasonably withheld.

3. **No Joint Undertaking.** The provision of the Services by EQ Care does not constitute a joint undertaking between EQ Care and Client to furnish any service or services to the Members or to any other party. The Parties are independent parties and shall not be deemed or construed, by virtue of this Agreement, to be the

employee, representative, partner, or joint venturer of the other. Neither Party shall have the power to bind the other or to incur obligations on the other's behalf without the other Party's prior written consent.

#### 4. Personal Information; Confidential Information.

**4.1 Personal Information.** EQ Care agrees that with respect to Member's personal health information and other individually identifiable information ("Personal Information"):

- a) it shall not use, access, manage, transfer, or disclose Personal Information collected in the performance of the Services, beyond what is necessary to perform the Services;
- b) from the date of commencement of the provision of the Services and continuously during the Term, it shall have in place the technological, physical and organization security safeguards to protect Personal Information against anticipated threats or hazards, loss, theft, unauthorized access, disclosure, copying, use, modification, disposal and destruction;
- c) it will protect Personal Information in its possession as required by, and in compliance with, all privacy laws and this Agreement; and;
- d) to the extent permitted by law it shall cooperate with Client and/or any Member to respond to any complaints initiated against Client related to compliance obligations of Personal Information.

**4.2 Confidential Information.** Each Party acknowledges that in performing its obligations hereunder it may have access to and receive ("Receiving Party") certain confidential and/or proprietary information including without limitation lists of clients, software, knowledge, data, tools, methodologies, processes, plans, procedures, techniques, manuals, treatment protocols, clinical indicators, case rates, provider payment structure information, underwriting methodology, proprietary rating plans, provider practice data, member-outcomes data, audit reports and actuarial analyses (collectively "Confidential Information") from the other Party ("Disclosing Party"). Receiving Party agrees not to give, sell or in any way transfer, either directly or indirectly, Confidential Information to any third party except with the express written consent of Disclosing Party. Receiving Party agrees not to use, either directly or indirectly, Confidential Information for its own purposes or the purposes of others at any time other than as provided for in this Agreement. The Parties agree that the names of all EQ Care medical professionals and consultants are deemed to be Confidential Information of EQ Care.

Confidential Information will not include information which is:

- a) or becomes a part of the public domain through no act or omission of Receiving Party;
- b) lawfully obtained by Receiving Party from a third party who is not under any legal obligation to refrain from disclosing such information;
- c) independently developed by employees of Receiving Party who are not recipients of the Confidential Information as provided by written documentation evidencing same; or

- d) disclosed by legal requirement as provided by an opinion of counsel, and in such case only upon prompt written notice to Disclosing Party providing an opportunity to limit such disclosure.

Receiving Party agrees to maintain the confidential nature of the Confidential Information by limiting access to such information to only those individuals that are directly involved in performing obligations under this Agreement. The Parties agree to keep the Confidential Information of Disclosing Party secure and confidential to the same extent Receiving Party maintains its own Confidential Information, and no less than commercially reasonable protections.

Upon a termination of this Agreement, Receiving Party agrees to return any and all Confidential Information of Disclosing Party upon written notice subject to any obligations of applicable law.

## **5. Representations of the Parties; Disclaimer.**

### **5.1** Each Party warrants and represents that:

- a) it has the necessary and actual right and authority to enter into and to perform its obligations under this Agreement;
- b) it has taken all necessary corporate action to authorize the execution, delivery, and performance of this Agreement;
- c) this Agreement constitutes a valid and binding obligation enforceable against the Party in accordance with its terms, and;
- d) neither the execution of this Agreement nor the performance of its terms will violate any law to which such Party is or may be bound.

**5.2** EQ Care represents that during the Term, it will maintain professional liability errors and omissions insurance coverage (the "Insurance Coverage") to cover a maximum of claims made by Client or Members against EQ Care for alleged acts, errors, and omissions by EQ Care or its employees or agents in the provision of the Services. Client understands that medical practitioners providing the services benefit from their own professional insurance and that EQ care will have no liability towards Client, any Member or any other person with respect a claim of medical malpractice.

**5.3** Client acknowledges and agrees that EQ Care has made no representations, and has expressly disclaimed, to the maximum extent permitted by law, all warranties or representations of every kind or nature, either express, implied, or statutory, as to the services including, without limitation, any implied warranties of merchantability, fitness for a particular purpose ,title, or non-infringement of third parties.

**6. Fees.** In consideration for the Services, Client shall pay RWAM Insurance Administrators Inc. during the initial one-year Term, the applicable Fees as set out in Schedule A to this Agreement. The Agreement shall automatically renew for successive one-year renewal terms, unless either party provides 30 days prior written notice on non-renewal. For any renewal term, the Fees shall remain unchanged, unless RWAM Insurance Administrators Inc. provides Client with 30 days' written notice of changes to the Fees prior to expiry of the then-current term.

- 7. Limitation of Liability.** Subject to the terms of this Agreement, each of EQ Care and Client will be liable to the other with respect to this Agreement and any other obligations related thereto for an amount that will not, in the aggregate, exceed the Fees paid or payable by Client to RWAM Insurance Administrators Inc. for all Services provided under this Agreement during the 12 months preceding the event giving rise to the claim or action; provided that if the event giving rise to liability occurs during the first 12 months after the Effective Date, liability will be limited to an amount equal to the total Fees paid and that would be payable to RWAM Insurance Administrators Inc. pursuant to this Agreement for proper performance of the Services during such 12 month period. Notwithstanding the foregoing, in no event will a Party be liable for indirect, incidental or consequential, exemplary, punitive or special damages, lost profits, business revenue or goodwill, even if such Party has been advised of the possibility of such damages in advance. This Section will apply irrespective of the nature of the cause of action, demand or Claim, including but not limited to, default or breach of contract (including fundamental breach), negligence, tort or any other legal theory, and will survive a fundamental breach or breaches of this Agreement or of any remedy contained herein. Except for claims relating to Client's unauthorized use of EQ Care IP or either Party's disclosure of Confidential Information of the other, no actions (regardless of form) arising out of or related in any way to this Agreement may be commenced by either Party more than one year after the cause of action accrued, even if the basis for such action was not known or discovered during such one-year period.
- 8. Publicity.** Upon prior written consent from Client, EQ Care may use, in EQ Care's promotional and marketing materials and on EQ Care's websites, the name, logo, and other marks of Client as a user of the Services, as well as Client-authorized quotations about EQ Care or the Services, for so long as Client uses the Services (and for a reasonable period thereafter to allow EQ Care to remove Client's name and marks from EQ Care's websites).
- 9. Term and Termination.** The term of the Agreement shall be for a period of one year from the date of commencement of provision of the Services by EQ Care to Client and its Members ("Term"). Client may terminate this Agreement by written notice to EQ Care within 30 days from the end of the initial one-year period of the Term, or with 30-days notice during any renewal term thereafter. The following sections shall survive the termination of this Agreement: 2. Intellectual Property Rights, 4.1 Personal Information; 4.2 Confidential Information, and 6. Indemnification; Limitations of Liability.

If a Client terminates its agreement with EQ Care in connection with the provision of Services, Client and EQ Care shall collaborate to allow such Members to continue to benefit from the Services after such termination.

**10. Dispute Resolution.**

**10.1**All disputes arising out of or in connection with this Agreement that cannot be resolved through good faith negotiation between the Parties shall be resolved through binding arbitration governed by the rules and procedures of the Canadian Arbitration Association; provided, however, that EQ Care reserves the right to seek equitable relief in any court of competent jurisdiction against threatened violations of EQ Care's intellectual property rights. The Parties shall endeavor to select a mutually acceptable arbitrator

knowledgeable about issues relating to the subject matter of this Agreement. If the Parties are unable to agree to such a selection, each Party will select an arbitrator and those arbitrators in turn shall select a third arbitrator. The arbitration will take place in Montreal, Quebec. This agreement to arbitrate shall be specifically enforceable by either Party.

**10.2** With the exception of privileged, confidential, proprietary, or trade secret information, all documents, materials, and information in the possession of each Party that are in any way materially relevant to the claim(s) or dispute(s) shall be made available to the other Party for review and copying no later than 45 days after the notice of arbitration is served.

**10.3** Except as provided in Section 10.8 (Severability), the arbitrator(s) shall not have the authority, power, or right to alter, change, amend, modify, add, or subtract from any provision of this Agreement or to award punitive damages. The award rendered by the arbitrator(s) shall state the reasons for the award and shall be final and binding on the Parties. Judgment may be entered on such award in any court having jurisdiction.

## **11. Miscellaneous.**

**11.1 Entire Agreement;** This Agreement constitutes the entire agreement among the Parties and supersedes and cancels any prior agreements, representations, warranties, or communications, whether oral or written, among the Parties relating to the subject matter of the Agreement. This Agreement may only be modified, changed, waived, discharged, or terminated by an agreement in writing signed by the Party against whom or which the enforcement of such modification, change, waive, discharge, or termination is sought.

**11.2 Waiver.** Any failure on the part of a Party to comply with any of its obligations, agreements, or responsibilities under this Agreement may be waived by the other Party to whom such compliance is owed. No waiver of any provision of such agreements shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a waiver of any failure other than that waived.

**11.3 Assignment.** Client may not assign or otherwise transfer any of its rights, duties, or obligations under this Agreement to any person or entity without the prior written consent of EQ Care.

**11.4 No Third-Party Beneficiaries.** No person other than the Parties and their respective successors and permitted assigns is intended to be a beneficiary of this Agreement. In executing this Agreement, the Parties do not intend to create third-party beneficiary rights in anyone not a party to the Agreement.

**11.5 Force Majeure.** Neither Party shall have liability to the other as a result of a Force Majeure Event. For purposes of this Agreement, "Force Majeure Event" means an event not reasonably foreseeable, beyond a Party's reasonable control, and occurring without its fault or negligence including, without limitation:

- a) an act of nature, such as fire, flood, earthquake, storm, tornado, lightning, landslide, sink hole, or outbreak of disease;

- b) a service failure caused by third parties, such as a power or utility outage or a labor dispute affecting suppliers or subcontractors;
- c) a civil disruption such as war, invasion, insurrection, trade embargo, or activities by terrorists or public enemies, or;
- d) action by a governmental body that enjoins or prevents performance by a Party. Neither Party shall be liable, nor shall any credit or other remedy be extended, for any failure or delay in performance under this Agreement where such failure or delay is proximately caused by a Force Majeure Event; provided, however, that the nonperforming Party uses commercially reasonable efforts to avoid or remove such causes of non-performance and restores performance as soon as such causes are removed.

**11.6 Further Assurances.** Each Party covenants that (a) it will comply in all material respects with any applicable laws in the performance of this Agreement, and (b) at any time, and from time to time during the Term, it will execute such additional instruments and take such actions as may be reasonably requested by the other Party to confirm or perfect or otherwise to carry out the intent and purposes of this Agreement.

**11.7 Notice.** All notifications, consents, reports, requests, demands, and other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed given when mailed (with return receipt requested), emailed (receipt for which is confirmed), faxed (which is confirmed), or sent via a recognized overnight courier service, to the Parties at the following addresses, or pursuant to such other instructions as may be designated in writing by the Party to receive such notice.

**If to EQ Care:**

Equinoxe Virtual Clinic Corporation  
201-4060 St. Catherine Street West  
Montreal, Quebec  
H3Z 2Z3

**Attn:** Daniel Martz, CEO

**If to Client:**

To the address, email, and/or fax number listed in the Application Form

**11.8 Severability.** Any term or provision of this Agreement that is held to be invalid, void, or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions of such agreements or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction. If any term or provision of this Agreement is declared invalid, void, or unenforceable, the Parties agree that the arbitral tribunal, court, or other authority making such determination shall have the power to reduce the scope, duration, or applicability of the term or provision, to delete specific words or phrases, or to replace any invalid, void, or unenforceable term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision. If the economic or legal substance of the transactions contemplated by such agreements is affected in any manner adverse to any Party as a result thereof, the Parties agree to negotiate in good faith such modifications as are appropriate to ensure that

the burdens and benefits of each Party under such modified agreement are reasonably comparable to the burdens and benefits originally contemplated.

**11.9 Governing Law.** Subject to Section 10, this Agreement shall be governed by and construed in accordance with the laws of the Province of Quebec, without regard to provisions relating to conflict of laws. Any action brought in connection with this Agreement will be brought only in the courts in the City of Montreal, in the Province of Quebec and both Parties consent to the personal jurisdiction of such courts and waive any objections to venue of such courts.



These Terms and Conditions are acknowledged by:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Company: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Service Effective Date: \_\_\_\_\_

## Schedule A

### **Services:**

The EQ Care program connects members of RWAM's Insurance Administrators Inc clients to a geographically distributed network of Canadian doctors, nurses, nurse practitioners and mental health professionals, in a range of specialties, via an online app, utilizing private video, secure messaging, file sharing and patient care plans, 7 days per week.

EQ Care provides members with the comfort in knowing they can connect with Canadian health care practitioners, at their convenience, when they need medical advice and care. The service helps to enable better access to care, and improved medical healthcare outcomes, by shortening the time frame to receiving primary care, and benefiting from medical specialist referrals. Members can also have prescriptions requisitioned, and lab or other diagnostic tests ordered, remotely, without having to endure long wait times or physical dislocation from a preferred location.

### **Rates:**