

## Expain Patient Agreement

PLEASE READ THE FOLLOWING CAREFULLY BEFORE INSTALLING AND/OR USING THE APP, INCLUDING ANY INTERACTIVE VOICE RESPONSE SERVICES.

By clicking the “accept” or “ok” button, or installing and/or using the Expain mobile software application (which may be accessed by telephone via interactive voice response tools or services (“**IVR Services**”)) (the “**App**”) you expressly acknowledge and agree that you are entering into a legal agreement with Expain, Inc. (“**Expain**”, “**we**”, “**us**” or “**our**”), and have understood and agree to comply with, and be legally bound by, the terms and conditions of this software user agreement (“**Agreement**”). You hereby waive any applicable rights to require an original (non-electronic) signature or delivery or retention of non-electronic records, to the extent not prohibited under applicable law. If you do not agree to be bound by this Agreement, please do not download, install or use the App.

**ARBITRATION NOTICE.** Except for certain kinds of disputes described in Section 22, you agree that disputes arising under this Agreement will be resolved by binding, individual arbitration, and BY ACCEPTING THESE TERMS, YOU AND EXPAIN ARE EACH WAIVING THE RIGHT TO A TRIAL BY JURY OR TO PARTICIPATE IN ANY CLASS ACTION OR REPRESENTATIVE PROCEEDING. YOU AGREE TO GIVE UP YOUR RIGHT TO GO TO COURT to assert or defend your rights under this contract (except for matters that may be taken to small claims court). Your rights will be determined by a NEUTRAL ARBITRATOR and NOT a judge or jury. (See Section 22.)

- 1. Ability to Accept.** By agreeing to these terms, you affirm that you are over 13 years of age. If you are between the age of 13 and 18 years then, prior to installing or using the App, you must first review this Agreement with your parent or guardian to make sure that you and your parent or guardian understand its terms and conditions and agree to them.
- 2. License.** Subject to the terms and conditions of this Agreement, we hereby grant you a personal, revocable, non-exclusive, non-sublicensable, non-assignable, non-transferable license (“**License**”) to: (i) (a) either download, install and use the App on a mobile telephone, tablet, or other device (each, a “**Device**”) that you own or control or (b) access and use the IVR Services via a telephone, which shall also be considered a “**Device**”; and (ii) access and use the App on such Device in accordance with this Agreement and any applicable Usage Rules (defined below).
- 3. License Restrictions.** You agree not to, and shall not permit any third party to: (i) sublicense, redistribute, sell, lease, lend or rent the App; (ii) make the App available over a network where it could be used by multiple devices owned or operated by different people at the same time; (iii) disassemble, reverse engineer, decompile, decrypt, or attempt to derive the source code of, the App; (iv) copy (except for back-up purposes), modify, improve, or create derivative works of the App or any part thereof; (v) circumvent, disable or otherwise interfere with security-related features of the App or features that prevent or restrict use or copying of any content or that enforce limitations on use of the App; (vi) remove, alter or obscure any proprietary notice or identification, including copyright, trademark, patent or other notices, contained in or displayed on or via the App; (vii) use any communications systems provided by the App to send unauthorized and/or unsolicited commercial communications; (viii) use the Expain name, logo or trademarks without our prior written consent; (ix) copy the language and/or content of any IVR Services; and/or (x) use the App to violate any applicable laws, rules or regulations, or for any unlawful, harmful, irresponsible, or inappropriate purpose, or in any manner that breaches this Agreement.
- 4. Account.** In order to use some of the App features you may have to create or use an account (an “**Account**”). If you create an Account, you must provide accurate and complete information for yourself. You are solely responsible for the activity that occurs in your Account, and you must keep your Account password secure. You must notify us immediately of any unauthorized use of your Account.
- 5. Reports.** The Software and the App allow you to access results, information and reports obtained from and created in connection with the physical well being, monitoring, and analysis provided via the App (“**Reports**”). The Software and the App may assist your health care provider in its provision of remote patient monitoring services, including allowing you and your health care provider to communicate about your health and the Reports. You authorize Expain to contact you at the phone number associated with your Account via phone or text (SMS) using automated dialing technology in order to facilitate such remote monitoring services. You acknowledge and agree that message and data rates may apply.
- 6. Usage Rules.** If you are downloading the App from a third party mobile device platform or service provider (“**Distributor**”), please be aware that the Distributor may have established usage rules that also govern your use of the App (“**Usage Rules**”). We specifically refer to the Usage Rules of certain Distributors below in the section below entitled ‘*Distributor Requirements and Usage Rules*’, but other Usage Rules may be applicable depending on where the App has been downloaded from. You acknowledge that, prior to downloading the App from a Distributor, you have had the opportunity to review and understand, and will comply with, its Usage Rules. The Usage Rules that are applicable to your use of the App are incorporated into this Agreement by this reference. You

represent that you are not prohibited by any applicable Usage Rules and/or applicable law from using the App; if you are unable to make such a representation, you are prohibited from installing and/or using the App.

7. **Location Data.** Certain features or functionality of the App, including those features relating to your activity levels and/or use of emergency medical services (“**Features**”), may collect or be dependent on data related to your geographic location (“**Location Data**”). If you wish to use these Features, you agree to provide or to make your Location Data accessible to us. To the extent that we do collect Location Data, we shall use it in accordance with our Privacy Policy (defined below). If you do not provide or make such Location Data accessible, the Features may be limited or not operate.

## 8. **Intellectual Property Rights.**

8.1. **Ownership.** The App is licensed and not sold to you under this Agreement and you acknowledge that Expain and its licensors retain all title, ownership rights and Intellectual Property Rights (defined below) in and to the App (and its related software). We reserve all rights not expressly granted herein to the App. “**Intellectual Property Rights**” means any and all rights in and to any and all trade secrets, patents, copyrights, service marks, trademarks, know-how, or similar intellectual property rights, as well as any and all moral rights, rights of privacy, publicity and similar rights of any type under the laws or regulations of any governmental, regulatory, or judicial authority, whether foreign or domestic.

8.2. **Content.** The content on the App, including without limitation, the text, information, documents, descriptions, products, software, graphics, photos, sounds, videos, interactive features, and services (the “**Materials**”) and the trademarks, service marks and logos contained therein (“**Marks**”, and together with the Materials, the “**Content**”), is the property of Expain and/or its licensors and may be protected by applicable copyright or other intellectual property laws and treaties. “Expain” and the Expain logo are Marks of Expain and its affiliates. All other Marks used on the App are the trademarks, service marks, or logos of their respective owners.

8.3. **Use of Content.** The content on the App is provided to you “as is” for your personal use only and may not be used, copied, distributed, transmitted, broadcast, displayed, sold, licensed, de-compiled, or otherwise exploited for any other purposes whatsoever without our prior written consent. If you download or print a copy of the content, you must retain all copyright and other proprietary notices contained therein.

## 9. **Payments.**

9.1. Please be aware that your use of the App may require and utilize internet connection or data access. To the extent that third party service provider or carrier charges for your internet or data usage are applicable, you agree to be solely responsible for those charges.

10. **Information Description.** We attempt to be as accurate as possible. However, we cannot and do not warrant that the content available on the App is accurate, complete, reliable, current, or error-free. We reserve the right to make changes in or to the content, or any part thereof without the requirement of giving you any notice prior to or after making such changes to the content.

11. **Privacy.** We will use any personal information that we may collect or obtain in connection with the App in accordance with our privacy policy, which is available at: <https://portal.getexpain.com/#/privacy> (“**Privacy Policy**”), and you agree that we may do so. Please also be aware that certain personal information and other information provided by you in connection with your use of the App may be stored on your Device (even if we do not collect that information). You are solely responsible for maintaining the security of your Device from unauthorized access.

## 12. **Warranty Disclaimers.**

12.1. THE APP IS PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS WITHOUT WARRANTIES OF ANY KIND INCLUDING, WITHOUT LIMITATION, REPRESENTATIONS, WARRANTIES AND CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, AND THOSE ARISING BY STATUTE OR FROM A COURSE OF DEALING OR USAGE OF TRADE.

12.2. WE DO NOT WARRANT THAT THE APP WILL OPERATE ERROR-FREE, THAT THE APP IS FREE OF VIRUSES OR OTHER HARMFUL CODE OR THAT WE WILL CORRECT ANY ERRORS IN THE APP. YOU AGREE THAT WE WILL NOT BE HELD RESPONSIBLE FOR ANY CONSEQUENCES TO YOU OR ANY THIRD PARTY THAT MAY RESULT FROM TECHNICAL PROBLEMS INCLUDING WITHOUT LIMITATION IN CONNECTION WITH THE INTERNET (SUCH AS SLOW CONNECTIONS, TRAFFIC CONGESTION OR OVERLOAD OF OUR OR OTHER SERVERS) OR ANY TELECOMMUNICATIONS OR INTERNET PROVIDERS.

12.3. EXPAIN DOES NOT OFFER A WARRANTY OR MAKE ANY REPRESENTATION REGARDING ANY CONTENT OR INFORMATION AVAILABLE THROUGH THE APP, INCLUDING WITHOUT LIMITATION THE REPORTS. YOUR USE OF AND RELIANCE UPON THE APP ARE ENTIRELY AT

YOUR SOLE DISCRETION AND RISK, AND EXPAIN SHALL HAVE NO RESPONSIBILITY OR LIABILITY WHATSOEVER TO YOU OR TO ANY THIRD PARTY IN CONNECTION WITH ANY OF THE FOREGOING.

- 12.4. IF YOU HAVE A DISPUTE WITH YOUR HEALTH CARE PROVIDER, INCLUDING ANY DISPUTE REGARDING ANY BILLING OR SERVICE PROVIDED BY SUCH HEALTH CARE PROVIDER, YOU AGREE THAT WE ARE NOT LIABLE FOR ANY CLAIMS OR DAMAGES ARISING OUT OF OR CONNECTED WITH SUCH A DISPUTE. WE RESERVE THE RIGHT, BUT HAVE NO OBLIGATION, TO MONITOR ANY SUCH DISPUTE.
- 12.5. EXPAIN DOES NOT OFFER A WARRANTY OR MAKE ANY REPRESENTATION REGARDING ANY IMPROVEMENT (OR LACK THEREOF) OF ANY USER'S PHYSICAL STATE AND/OR CAPABILITIES.
- 12.6. YOU HEREBY ACKNOWLEDGE THAT YOUR USE OF THE APP IS VOLUNTARY AND AT YOUR OWN RISK, AND YOU AGREE THAT EXPAIN WILL NOT BE HELD RESPONSIBLE OR LIABLE FOR ANY CONSEQUENCES (SUCH AS, BUT NOT LIMITED TO, HEALTH PROBLEMS OR PERSONAL INJURY) TO YOU OR ANY THIRD PARTY THAT RESULT FROM YOUR USE OF (OR INABILITY TO USE) THE APP.
- 12.7. NEITHER EXPAIN NOR ITS PERSONNEL ARE LICENSED MEDICAL CARE PROVIDERS, AND THEY HAVE NO EXPERTISE IN DIAGNOSING, EXAMINING, OR TREATING MEDICAL CONDITIONS OF ANY KIND, OR IN DETERMINING THE EFFECT OF ANY SPECIFIC EXERCISE ON A MEDICAL CONDITION. YOU HEREBY ACKNOWLEDGE THAT NO MEDICAL OR SIMILAR PROFESSIONAL ADVICE IS PROVIDED (OR PURPORTED TO BE PROVIDED) VIA THE APP, AND THE APP SHOULD NOT BE USED OR RELIED UPON IN PLACE OF CONSULTING (OR OTHERWISE SEEKING ADVICE FROM) A QUALIFIED AND LICENSED MEDICAL PROFESSIONAL, SUCH AS YOUR PHYSICIAN. SEEK PROFESSIONAL ADVICE BEFORE FOLLOWING ANY INSTRUCTIONS YOU RECEIVE THROUGH THE APP. NOT ALL INFORMATION THAT MAY BE SPECIFIED IN THE APP IS SUITABLE FOR EVERYONE.
- 12.8. NEVER DISREGARD PROFESSIONAL MEDICAL ADVICE OR DELAY IN SEEKING IT BECAUSE OF SOMETHING YOU HAVE READ ON OR THROUGH THE APP. YOU SHOULD UNDERSTAND THAT WHEN PARTICIPATING IN ANY ACTIVITY OR PERFORMING ANY ACTION SUGGESTED IN THE APP, THERE IS THE POSSIBILITY OF PERSONAL INJURY. IF YOU THINK YOU MAY HAVE A MEDICAL EMERGENCY, CALL YOUR PHYSICIAN OR EMERGENCY SERVICES IMMEDIATELY.
- 12.9. Applicable law may not allow the exclusion of certain warranties, so to that extent such exclusions may not apply.

### **13. Limitation of Liability.**

- 13.1. TO THE FULLEST EXTENT PERMITTED BY LAW, UNDER NO CIRCUMSTANCES SHALL EXPAIN BE LIABLE FOR ANY SPECIAL, DIRECT, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, OR FOR ANY LOSS OF DATA, REVENUE, BUSINESS OR REPUTATION, THAT ARISES UNDER OR IN CONNECTION WITH THIS AGREEMENT, OR THAT RESULTS FROM THE USE OF, OR THE INABILITY TO USE, THE APP EVEN IF EXPAIN HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 13.2. IN ANY EVENT, EXPAIN'S TOTAL AGGREGATE LIABILITY FOR ALL DAMAGES AND LOSSES THAT ARISE UNDER OR IN CONNECTION WITH THIS AGREEMENT, OR THAT RESULT FROM YOUR USE OF OR INABILITY TO USE THE APP, SHALL NOT IN ANY CIRCUMSTANCE EXCEED THE GREATER OF, 1) THE TOTAL AMOUNTS, IF ANY, ACTUALLY PAID BY YOU TO EXPAIN FOR USING THE APP WITHIN THE THREE (3) MONTHS PRECEDING THE DATE OF BRINGING A CLAIM, or 2) \$100.

14. **Indemnity.** You agree to defend, indemnify and hold harmless Expain and our affiliates, and our respective officers, directors, employees and agents, from and against any and all claims, damages, obligations, losses, liabilities, costs and expenses (including but not limited to attorney's fees) arising from: (i) your use of, or inability to use, the App; (ii) your violation of this Agreement; and (iii) your violation of any third party right, including without limitation any copyright, property, or privacy right. Without derogating from or excusing your obligations under this section, we reserve the right (at your own expense), but are not under any obligation, to assume the exclusive defense and control of any matter which is subject to an indemnification by you if you choose not to defend or settle it. You agree not to settle any matter subject to an indemnification by you without first obtaining our express approval.

15. **Third Party Software.** You expressly acknowledge that the App may include third party components ("**Third Party Software**"), which shall be used by you solely in conjunction with the App, and shall not be used for any other purpose without the prior written consent of Expain. Such Third Party Software is provided "As-Is" without any warranty of any kind, and subject to the license terms attached to such Third Party Software, the provisions of this Agreement shall apply to all such Third Party Software providers and Third Party Software as if they were Expain and the App respectively. In the event of any inconsistencies or conflicting provisions between the Third

Party Software licenses and the provisions of this Agreement, the provisions of the Third Party Software licenses shall prevail.

16. **Export Laws.** You agree to comply fully with all applicable export laws and regulations to ensure that neither the App nor any technical data related thereto are exported or re-exported directly or indirectly in violation of, or used for any purposes prohibited by, such laws and regulations.
17. **Updates and Upgrades.** We may from time to time provide updates or upgrades to the App (each a “**Revision**”), but are not under any obligation to do so. Such Revisions will be supplied according to our then-current policies, which may include automatic updating or upgrading without any additional notice to you. You consent to any such automatic updating or upgrading of the App. All references herein to the App shall include Revisions. This Agreement shall govern any Revisions that replace or supplement the original App, unless the Revision is accompanied by a separate license agreement that will govern the Revision.
18. **Term and Termination.**
  - 18.1. This Agreement is effective until terminated by us or you. We reserve the right, at any time, to: (i) discontinue or modify any aspect of the App; and/or (ii) terminate this Agreement and your use of the App with or without cause, and shall not be liable to you or any third party for any of the foregoing. If you object to any term or condition of this Agreement or any subsequent modifications thereto, or become dissatisfied with the App in any way, your only recourse is to immediately discontinue use of the App.
  - 18.2. Upon termination of this Agreement, you shall cease all use of the App. This Section 18.2 and Sections 8 (*Intellectual Property Rights*), 11 (*Privacy*), 12 (*Warranty Disclaimers*), 13 (*Limitation of Liability*), 14 (*Indemnity*), and 19 (*Assignment*) to 23 (*General*) shall survive termination of this Agreement.
19. **Assignment.** This Agreement, and any rights and licenses granted hereunder, may not be transferred or assigned by you but may be assigned by Expain without restriction or notification.
20. **Modification.** We reserve the right to modify this Agreement on a going-forward basis at any time upon 10 days notice. Please check the Agreement periodically for changes. We will publish the revised Agreement on the App or the Expain website. If a change to the Agreement materially modifies your rights or obligations, we may require that you accept the modified Agreement in order to continue to use the App. Material modifications are effective upon your acceptance of the modified Agreement. Immaterial modifications are effective upon publication. Your continued use of the App thereafter means that you accept those changes. Disputes arising under this Agreement will be resolved in accordance with the version of the Agreement that was in effect at the time the dispute arose.
21. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware without regard to its conflict of laws rules. You agree to submit to the personal and exclusive jurisdiction of the courts located in New Castle County, Delaware, for resolution of any lawsuit or court proceeding permitted under these Terms.
22. **Dispute Resolution and Arbitration**
  - 22.1. **Generally.** In the interest of resolving disputes between you and Expain in the most expedient and cost effective manner, you and Expain agree that every dispute arising in connection with these Terms will be resolved by binding arbitration. Arbitration is less formal than a lawsuit in court. Arbitration uses a neutral arbitrator instead of a judge or jury, may allow for more limited discovery than in court, and can be subject to very limited review by courts. Arbitrators can award the same damages and relief that a court can award. This agreement to arbitrate disputes includes all claims arising out of or relating to any aspect of these Terms, whether based in contract, tort, statute, fraud, misrepresentation, or any other legal theory, and regardless of whether a claim arises during or after the termination of these Terms. **YOU UNDERSTAND AND AGREE THAT, BY ENTERING INTO THESE TERMS, YOU AND EXPAIN ARE EACH WAIVING THE RIGHT TO A TRIAL BY JURY OR TO PARTICIPATE IN A CLASS ACTION.**
  - 22.2. **Exceptions.** Despite the provisions of this Section 22, nothing in these Terms will be deemed to waive, preclude, or otherwise limit the right of either party to: (a) bring an individual action in small claims court; (b) pursue an enforcement action through the applicable federal, state, or local agency if that action is available; (c) seek injunctive relief in a court of law in aid of arbitration; or (d) to file suit in a court of law to address an intellectual property infringement claim.
  - 22.3. **Opt-Out.** If you do not wish to resolve disputes by binding arbitration, you may opt out of the provisions of this Section 22 within 30 days after the date that you agree to these Terms by sending a letter to Expain, Inc., Attention: Arbitration Opt-Out, 550 S California Ave, Suite 1, Palo Alto, CA 94306 that specifies: Your full legal name, the email address associated with your account on the Service, and a statement that you wish to opt out of arbitration (“**Opt-Out Notice**”). Once Expain receives your **Opt-Out Notice**, this Section 22 will be void and any action arising out of these Terms will be resolved as set forth in Section 21. The remaining provisions of these Terms will not be affected by your **Opt-Out Notice**.

- 22.4. **Arbitrator.** Any arbitration between you and Expain will be settled under the Federal Arbitration Act and administered by the American Arbitration Association (“AAA”) under its Consumer Arbitration Rules (collectively, “AAA Rules”) as modified by these Terms. The AAA Rules and filing forms are available online at [www.adr.org](http://www.adr.org), by calling the AAA at 1-800-778-7879, or by contacting Expain. The arbitrator has exclusive authority to resolve any dispute relating to the interpretation, applicability, or enforceability of this binding arbitration agreement.
- 22.5. **Notice of Arbitration; Process.** A party who intends to seek arbitration must first send a written notice of the dispute to the other party by certified U.S. Mail or by Federal Express (signature required) or, only if that other party has not provided a current physical address, then by electronic mail (“Notice of Arbitration”). Expain’s address for Notice is: Expain, Inc., 550 S California Ave, Suite 1, Palo Alto, CA 94306. The Notice of Arbitration must: (a) describe the nature and basis of the claim or dispute; and (b) set forth the specific relief sought (“Demand”). The parties will make good faith efforts to resolve the claim directly, but if the parties do not reach an agreement to do so within 30 days after the Notice of Arbitration is received, you or Expain may commence an arbitration proceeding. All arbitration proceedings between the parties will be confidential unless otherwise agreed by the parties in writing. During the arbitration, the amount of any settlement offer made by you or Expain must not be disclosed to the arbitrator until after the arbitrator makes a final decision and award, if any. If the arbitrator awards you an amount higher than the last written settlement amount offered by Expain in settlement of the dispute prior to the award, Expain will pay to you the higher of: (i) the amount awarded by the arbitrator; or (ii) \$10,000.
- 22.6. **Fees.** If you commence arbitration in accordance with these Terms, Expain will reimburse you for your payment of the filing fee, unless your claim is for more than \$10,000, in which case the payment of any fees will be decided by the AAA Rules. Any arbitration hearing will take place at a location to be agreed upon in New Castle County, DE, but if the claim is for \$10,000 or less, you may choose whether the arbitration will be conducted: (a) solely on the basis of documents submitted to the arbitrator; (b) through a non-appearance based telephone hearing; or (c) by an in-person hearing as established by the AAA Rules in the county (or parish) of your billing address. If the arbitrator finds that either the substance of your claim or the relief sought in the Demand is frivolous or brought for an improper purpose (as measured by the standards set forth in Federal Rule of Civil Procedure 11(b)), then the payment of all fees will be governed by the AAA Rules. In that case, you agree to reimburse Expain for all monies previously disbursed by it that are otherwise your obligation to pay under the AAA Rules. Regardless of the manner in which the arbitration is conducted, the arbitrator must issue a reasoned written decision sufficient to explain the essential findings and conclusions on which the decision and award, if any, are based. The arbitrator may make rulings and resolve disputes as to the payment and reimbursement of fees or expenses at any time during the proceeding and upon request from either party made within 14 days of the arbitrator’s ruling on the merits.
- 22.7. **No Class Actions.** YOU AND EXPAIN AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. Further, unless both you and Expain agree otherwise, the arbitrator may not consolidate more than one person’s claims and may not otherwise preside over any form of a representative or class proceeding.
- 22.8. **Modifications to this Arbitration Provision.** If Expain makes any future change to this arbitration provision, other than a change to Expain’s address for Notice of Arbitration, you may reject the change by sending us written notice within 30 days of the change to Expain’s address for Notice of Arbitration, in which case your account with Expain will be immediately terminated and this arbitration provision, as in effect immediately prior to the changes you rejected will survive.
- 22.9. **Enforceability.** If Section 22.7 or the entirety of this Section 22 is found to be unenforceable, or if Expain receives an Opt-Out Notice from you, then the entirety of this Section 22 will be null and void and, in that case, the exclusive jurisdiction and venue described in Section 21 will govern any action arising out of or related to these Terms.

23. **General.** This Agreement, and any other legal notices published by us in connection with the App, shall constitute the entire agreement between you and Expain concerning the App. In the event of a conflict between this Agreement and any such legal notices, the terms of the applicable notice shall prevail with respect to the subject matter of such notice. No amendment to this Agreement will be binding unless in writing and signed by Expain. If any provision of this Agreement is deemed invalid by a court of competent jurisdiction, the invalidity of such provision shall not affect the validity of the remaining provisions of this Agreement, which shall remain in full force and effect. All section and sub-section headings used in this Agreement are for convenience only, and shall not be relied upon or used in interpreting this Agreement. No waiver of any term of this Agreement shall be deemed a further or continuing waiver of such term or any other term, and a party’s failure to assert any right or provision under this Agreement shall not constitute a waiver of such right or provision. YOU AGREE THAT ANY CAUSE

OF ACTION THAT YOU MAY HAVE ARISING OUT OF OR RELATED TO THE APP MUST COMMENCE WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES. OTHERWISE, SUCH CAUSE OF ACTION IS PERMANENTLY BARRED.

## **24. Distributor Requirements and Usage Rules.**

24.1. Apple. If you download the App from the Apple, Inc. (“**Apple**”) App Store (or in any event if you download an Apple iOS App) then, without derogating from the warranty disclaimers and limitation of liability as set forth in the Agreement:

- (i) You acknowledge and agree that:
  - (a) this Agreement is concluded between Expain and you only, and not with Apple, and Expain and its licensors, and not Apple, are solely responsible for the App and the content thereof.
  - (b) your use of the App is also subject to the Usage Rules established by Apple, including those set forth in the Apple App Store Terms of Service, effective as of the date that you enter into this Agreement.
  - (c) the License granted herein is limited to a non-transferable right to use the App on an Apple iPhone, iPod Touch, iPad, or other Apple-branded product that you own or control and that runs the iOS;
  - (d) Expain is solely responsible for providing any maintenance and support services with respect to the App, as specified in this Agreement, or as required under applicable law. Apple has no obligation whatsoever to furnish any maintenance and support services with respect to the App;
  - (e) Expain is solely responsible for any product warranties, whether express or implied by law, to the extent not effectively disclaimed. In the event of any failure of the App to conform to any applicable warranty, you may notify Apple, and Apple will, to the extent applicable, refund any purchase price paid (if any) by you for the App to you. To the maximum extent permitted by applicable law, Apple will have no other warranty obligation whatsoever with respect to the App, and, any other claims, losses, liabilities, damages, costs or expenses attributable to any failure to conform to any warranty will be Expain’s sole responsibility;
  - (f) Expain, and not Apple, is responsible for addressing any product claims you, or any third party, may have relating to the App or your possession and/or use of the App, including, but not limited to: (a) product liability claims; (b) any claim that the App fails to conform to any applicable legal or regulatory requirement; and (c) claims arising under consumer protection or similar legislation, including in connection with the App’s use of HealthKit and HomeKit frameworks;
  - (g) in the event of any third party claim that the App or your possession and use of the App infringes that third party’s intellectual property rights, Apple shall not be responsible for the investigation, defense, settlement and discharge of any such intellectual property infringement claim;
  - (h) Apple, and its subsidiaries, are third party beneficiaries of this Agreement, and that, upon your acceptance of the terms and conditions of this Agreement, Apple will have the right (and will be deemed to have accepted the right) to enforce this Agreement against you as a third party beneficiary thereof.
- (ii) You represent and warrant that: (a) you are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a “terrorist supporting” country; and (b) you are not listed on any U.S. Government list of prohibited or restricted parties.
- (iii) If you have any questions, complaints, or claims regarding the App, please contact Expain at support@getexpain.com.
- (iv) By entering into this Agreement you, to the extent legally permitted, hereby waive any applicable law requiring that this Agreement be localized to meet your language and other local requirements. To the extent that the foregoing is not permitted, you agree to be bound by the standard Apple Licensed Application End User License Agreement which is part of the Apple App Store Terms of Service, at [www.apple.com/legal/itunes/us/terms.html#SERVICE](http://www.apple.com/legal/itunes/us/terms.html#SERVICE) (as amended from time to time).

*Last updated: October 13<sup>th</sup>, 2021*