



## Enterprise Terms

PLEASE READ THESE ENTERPRISE TERMS (“**TERMS**”) CAREFULLY BEFORE USING THE SERVICES OFFERED BY TREK HEALTH INC. (“**TREK HEALTH**”). BY MUTUALLY EXECUTING ONE OR MORE ORDER FORMS WITH TREK HEALTH WHICH REFERENCE THESE TERMS (EACH, AN “**ORDER FORM**”), YOU (“**CUSTOMER**”) AGREE TO BE BOUND BY THESE TERMS (TOGETHER WITH ALL ORDER FORMS, THE “**AGREEMENT**”) TO THE EXCLUSION OF ALL OTHER TERMS. IF THE TERMS OF THIS AGREEMENT ARE CONSIDERED AN OFFER, ACCEPTANCE IS EXPRESSLY LIMITED TO SUCH TERMS.

### 1. Data Services

a. Upon mutual execution, each Order Form shall be incorporated into and form a part of the Agreement. Subject to Customer’s compliance with the terms and conditions of this Agreement (including any limitations and restrictions set forth on the applicable Order Form) Trek Health grants Customer and the number of Authorized Users set forth on the applicable Order Form the right to access and use the Trek Health Data including any software or services made available to Customer to access the Trek Health Data (collectively the “**Data Services**”) in each case, as further specified in each Order Form during the applicable Order Form Term (as defined below) for the internal business purposes of Customer, only as provided herein and only in accordance with Trek Health’s applicable official user documentation (the “**Documentation**”). An “**Authorized User**” is any employee, contractor or consultant of Customer authorized by Customer to use the Data Service on Customer’s behalf. Customer shall be fully responsible for each Authorized User’s use of the Data Services.

b. From time to time, Trek Health may provide upgrades, patches, enhancements, or fixes for the Data Services to its customers generally without additional charge (“**Updates**”), and such Updates will become part of the Data Services and subject to this Agreement; provided that Trek Health shall have no obligation under this Agreement or otherwise to provide any such Updates. Customer understands that Trek Health may cease supporting old versions or releases of the Data Services at any time in its sole discretion; provided that Trek Health shall use commercially reasonable efforts to give Customer reasonable prior notice of any major changes, but in no event less than sixty (60) days’ notice. Trek Health shall not materially decrease the functionality of the Data Services during the Term.

### 2. Implementation

a. Upon payment of any applicable fees set forth in each Order Form, Trek Health agrees to use reasonable commercial efforts to provide standard implementation assistance for the Data Services only if and to the extent such assistance is set forth on such Order Form (“**Implementation Assistance**”). If Trek Health provides Implementation Assistance in excess of any agreed-upon hours estimate, or if Trek Health otherwise provides additional services beyond those agreed in an Order Form, Customer will pay Trek Health at its then-current hourly rates for consultation.

b. Customer acknowledges and agrees that the Service may operate with or using application programming interfaces (APIs) and associated services operated or provided by third parties (“**Third Party Services**”). Trek Health is not responsible for the operation of such Third Party Services nor the availability or operation of the Data Services to the extent such availability and operation is dependent upon Third Party Services. Customer is solely responsible for procuring any and all rights necessary for it to access Third Party Services (including any Customer Data or other information relating thereto) and for complying with any applicable terms or conditions thereof as may be specified on the applicable Order Form. Trek Health does not make any representations or warranties with respect to Third Party Services. Any exchange of data or other interaction between Customer and Third Party Services is solely between Customer and such third party provider and is governed by such third party’s terms and conditions.

### 3. Support

Trek Health will make the Data Service available and provide support to Customer in accordance with Appendix A.

### 4. Ownership; Feedback

As between the parties, Trek Health retains all right, title, and interest in and to the Data Services, and all software, products, works, and other intellectual property and moral rights related thereto or created, used, or provided by Trek Health for the purposes of this Agreement, including any copies and derivative works of the foregoing. Any software or data which is distributed or otherwise provided to Customer hereunder (including without limitation any software or

data identified on an Order Form) shall be deemed a part of the “Trek Health Data” or “Data Services,” as applicable, and subject to all of the terms and conditions of this Agreement. No rights or licenses are granted except as expressly and unambiguously set forth in this Agreement. Customer may from time to time provide suggestions, comments or other feedback to Trek Health with respect to the Data Services (“**Feedback**”). Feedback, even if designated as confidential by Customer, shall not create any confidentiality obligation for Trek Health notwithstanding anything else. Customer shall, and hereby does, grant to Trek Health a nonexclusive, worldwide, perpetual, irrevocable, transferable, sublicensable, royalty-free, fully paid up license to use and exploit the Feedback for any purpose. Nothing in this Agreement will impair Trek Health’s right to develop, acquire, license, market, promote or distribute products, software or technologies that perform the same or similar functions as, or otherwise compete with any products, software or technologies that Customer may develop, produce, market, or distribute.

## **5. Fees; Payment**

Customer shall pay Trek Health fees for the Data Services as set forth in each Order Form (“**Fees**”). Unless otherwise specified in an Order Form, (i) all Fees shall be invoiced in advance and all invoices issued under this Agreement are payable in U.S. dollars within thirty (30) days from the date of invoice and (ii) all Fees shall be paid via electronic payment or check. Past due invoices are subject to interest on any outstanding balance of the lesser of 1.5% per month or the maximum amount permitted by law. Customer shall be responsible for all taxes associated with Service (excluding taxes based on Trek Health’s net income). All Fees paid are non-refundable and are not subject to set-off.

## **6. Restrictions**

Except as expressly set forth in this Agreement, Customer shall not (and shall not permit any third party to), directly or indirectly: (i) reverse engineer, decompile, disassemble, or otherwise attempt to discover the source code, object code, or underlying structure, ideas, or algorithms of the Data Services (except to the extent applicable laws specifically prohibit such restriction); (ii) modify, translate, or create derivative works based on the Data Services; (iii) copy, rent, lease, distribute, pledge, assign, or otherwise transfer or encumber rights to the Data Services; (iv) remove or otherwise alter any proprietary notices or labels from the Data Services or any portion thereof; (v) use the Data Services to build an application or product that is competitive with any Trek Health product or service, unless expressly authorized in the applicable Order Form; (vi) interfere or attempt to interfere with the proper working of the Data Services or any activities conducted on the Service; (vii) bypass any measures Trek Health may use to prevent or restrict access to the Data Services (or other accounts, computer systems or networks connected to the Service) or (viii) use the Data Services to store or transmit viruses, Trojan horses, worms, time bombs, malware, or other harmful or malicious code that could damage, disrupt, or disable the Service, (ix) use the Data Services in violation of any applicable local, state, national and foreign laws, treaties and regulations (x) use the Data Services in a manner that violates any third party intellectual property, contractual or other proprietary rights and (xi) provide any personal information or data (as defined under applicable privacy laws) or protected health information (as defined in the Health Insurance Portability and Protection Act, as amended) to the Data Services. Without Trek Health's prior written consent, Customer shall not sell, sublicense, distribute, disclose, publish, transmit, or otherwise make available any Trek Health Data to any third party. Customer shall not use the Data Services in any manner that exceeds the usage limits, scope, or parameters set forth in the applicable Order Form. Customer will ensure that Authorized Users comply with the terms of this Agreement at all times and shall be fully responsible for any breach of this Agreement by an Authorized User and for all of Customer’s activity in connection with the Service. Customer shall promptly notify Trek Health upon becoming aware of any unauthorized access to or use of the Data Services.

## **7. Customer Data; Security**

a. For purposes of this Agreement, “**Customer Inputs**” shall mean any data, information or other material provided, uploaded, or submitted by Customer to the Data Services in order to be processed by the Data Services to generate the desired Customer Output. “**Customer Output**” shall mean the data, information, actions, or results created, returned or generated by the Data Services, including any derivatives, based on the Customer Input. Collectively, Customer Input and Customer Output, to the extent such Customer Input and Customer Output does not contain Trek Health Data, shall be referred to as “**Customer Data**”. As between the parties, Customer will exclusively own the Customer Outputs, and nothing between the parties will be construed as a transfer to Trek Health of any rights of ownership in, or license to, the Customer Outputs, other than expressly granted herein. Customer shall be fully responsible for the accuracy, quality,

integrity, legality, reliability, appropriateness, lawfulness, and intellectual property ownership or right to use of all Customer Inputs. Customer Data shall be Customer's Confidential Information (defined below).

b. Customer, not Trek Health, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use of all Customer Data. Trek Health is not responsible to Customer for unauthorized access to Customer Data or the unauthorized use of the Service unless such access is due to Trek Health's gross negligence or willful misconduct. Customer is responsible for the use of the Service by any person to whom Customer has given access to the Service, even if Customer did not authorize such use. Customer agrees and acknowledges that Customer Data may be irretrievably deleted if Customer's account is ninety (90) days or more delinquent.

c. Notwithstanding anything to the contrary, Customer acknowledges and agrees that Trek Health may (i) internally use and modify (but not disclose) Customer Data for the purposes of (A) providing the Service to Customer and (B) generating Aggregated Anonymous Data (as defined below), and (ii) freely use and make available Aggregated Anonymous Data for Trek Health's business purposes (including without limitation, for purposes of improving, testing, operating, promoting and marketing Trek Health's products and services). "**Aggregated Anonymous Data**" means data submitted to, collected by, or generated by Trek Health in connection with Customer's use of the Service, but only in aggregate, anonymized form which can in no way be linked specifically to Customer.

d. Trek Health will maintain industry-standard administrative, physical, and technical safeguards designed to (i) ensure the security and confidentiality of Customer Data, (ii) protect against anticipated threats or hazards to the security or integrity of Customer Data, and (iii) protect against unauthorized access to or use of Customer Data.

## **8. Term; Termination**

a. This Agreement shall commence upon the date of the first Order Form, and, unless earlier terminated in accordance herewith, shall last until the expiration of all Order Form Terms. For each Order Form, unless otherwise specified therein, the "**Order Form Term**" shall begin as of the effective date set forth on such Order Form, and unless earlier terminated as set forth herein or as otherwise set forth on the applicable Order Form, (i) shall continue for the initial term specified on such Order Form (the "**Order Form Initial Term**"), and (ii) following the Order Form Initial Term, shall automatically renew for additional successive periods of equal duration to the Order Form Initial Term (each, an "**Order Form Renewal Term**", and collectively, the "**Term**") unless either party notifies the other party of such party's intention not to renew no later than thirty (30) days prior to the expiration of the Order Form Initial Term or then-current Order Form Renewal Term, as applicable. This Agreement shall continue until the final expiration or termination of all Order Forms associated with this Agreement.

b. In the event of a material breach of this Agreement by either party, the non-breaching party may terminate this Agreement by providing written notice to the breaching party, provided that the breaching party does not materially cure such breach within thirty (30) days of receipt of such notice. Either party may terminate this Agreement immediately upon the other party's breach of its confidentiality obligations. Trek Health may terminate immediately upon Customer's misuse of the Trek Health Data.

c. Without limiting the foregoing, Trek Health may suspend or limit Customer's access to or use of the Service if (i) Customer's account is more than thirty (30) days past due, or (ii) Customer's use of the Data Services results in (or is reasonably likely to result in) damage to or material degradation of the Data Services which interferes with Trek Health's ability to provide or provide access to the Data Services to other customers; provided that in the case of subsection (ii): (a) Trek Health shall use reasonable good faith efforts to work with Customer to resolve or mitigate the damage or degradation in order to resolve the issue without resorting to suspension or limitation; (b) prior to any such suspension or limitation, Trek Health shall use commercially reasonable efforts to provide notice to Customer describing the nature of the damage or degradation; and (c) Trek Health shall reinstate Customer's use of or access to the Service, as applicable, if Customer remediates the issue within thirty (30) days of receipt of such notice.

d. Upon the earlier of expiration or termination of this Agreement, the rights and licenses granted to the parties hereunder will immediately terminate. Notwithstanding the foregoing, Trek Health will provide Customer with access to Customer Data during the thirty (30) days following termination, solely for the purpose of extracting Customer Data to Customer's own data storage systems and Trek Health will provide such cooperation and assistance as Customer may reasonably request, including providing Customer with an extraction of Customer Data in a form and format determined

by Trek Health. Following such thirty (30) day period, Trek Health will promptly and permanently delete all Customer Data in its possession or under its control.

e. All provisions of this Agreement which by their nature should survive termination shall survive termination, including, without limitation, accrued payment obligations, ownership provisions, warranty disclaimers, indemnity and limitations of liability.

## **9. Indemnification**

Each party (“**Indemnitor**”) shall defend, indemnify, and hold harmless the other party, its affiliates and each of its and its affiliates’ employees, contractors, directors, suppliers and representatives (collectively, the “**Indemnitee**”) from all liabilities, claims, and expenses paid or payable to an unaffiliated third party (including reasonable attorneys’ fees) (“**Losses**”), that arise from or relate to any claim that (i) in the case of Customer as indemnitee, (a) the Customer’s use or misuse of the Data Services (in the case of Customer as Indemnitor), or (b) the Customer Data infringes, violates, or misappropriates any third party intellectual property or proprietary right or (ii) the software made available to Customer as part of the Data Services (in the case of Trek Health as Indemnitor), infringes, violates, or misappropriates any third party intellectual property or proprietary right. Each Indemnitor’s indemnification obligations hereunder shall be conditioned upon the Indemnitee providing the Indemnitor with: (i) prompt written notice of any claim (provided that a failure to provide such notice shall only relieve the Indemnitor of its indemnity obligations if the Indemnitor is materially prejudiced by such failure); (ii) the option to assume sole control over the defense and settlement of any claim (provided that the Indemnitee may participate in such defense and settlement at its own expense); and (iii) reasonable information and assistance in connection with such defense and settlement (at the Indemnitor’s expense). The foregoing obligations of Trek Health do not apply with respect to the Data Services or any information, technology, materials or data (or any portions or components of the foregoing) to the extent (i) not created or provided by Trek Health (including without limitation any Customer Data), (ii) made in whole or in part in accordance to Customer specifications, (iii) modified after delivery by Trek Health, (iv) combined with other products, processes or materials not provided by Trek Health (where the alleged Losses arise from or relate to such combination), (v) where Customer continues allegedly infringing activity after being notified thereof or after being informed of modifications that would have avoided the alleged infringement, or (vi) Customer’s use of the Data Service is not strictly in accordance herewith.

## **10. Disclaimer**

EXCEPT AS EXPRESSLY SET FORTH HEREIN, THE DATA SERVICES ARE PROVIDED “AS IS” AND “AS AVAILABLE” AND ARE WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES IMPLIED BY ANY COURSE OF PERFORMANCE, USAGE OF TRADE, OR COURSE OF DEALING, ALL OF WHICH ARE EXPRESSLY DISCLAIMED. TREK HEALTH DATA MAY CONTAIN DISCREPANCIES AND SHOULD UNDERGO APPROPRIATE QUALITY CHECKS WHEN USED TO INFORM BUSINESS DECISIONS.

## **11. Limitation of Liability**

EXCEPT FOR THE PARTIES’ INDEMNIFICATION OBLIGATIONS OR A PARTIES’ BREACH OF THEIR CONFIDENTIALITY OBLIGATIONS, IN NO EVENT SHALL EITHER PARTY, NOR ITS DIRECTORS, EMPLOYEES, AGENTS, PARTNERS, SUPPLIERS OR CONTENT PROVIDERS, BE LIABLE UNDER CONTRACT, TORT, STRICT LIABILITY, NEGLIGENCE OR ANY OTHER LEGAL OR EQUITABLE THEORY WITH RESPECT TO THE SUBJECT MATTER OF THIS AGREEMENT (I) FOR ANY LOST PROFITS, DATA LOSS, COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER, SUBSTITUTE GOODS OR SERVICES (HOWEVER ARISING), FOR ANY DIRECT DAMAGES IN EXCESS OF (IN THE AGGREGATE) THE FEES PAID (OR PAYABLE) BY CUSTOMER TO TREK HEALTH HEREUNDER IN THE TWELVE (12) MONTHS PRIOR TO THE EVENT GIVING RISE TO A CLAIM HEREUNDER.

## **12. Confidentiality**

a. Confidentiality. “**Confidential Information**” means this Agreement, any documentation or software provided hereunder and any nonpublic information that: (i) either party designates or communicates as confidential/proprietary (or similar); or (ii) any other document or other information that would generally be regarded as confidential or proprietary; but does not include information that: (a) is already known to the receiving party prior to disclosure by the disclosing party; (b) is or becomes known to the receiving party from a source other than the disclosing party and such disclosure does not result from any breach of an obligation of confidentiality owed with respect to such information; (c)

is independently developed without reference to the other party's Confidential Information; or (d) is or becomes publicly available other than as a result of a breach of this Agreement. Each party will protect the other's Confidential Information from unauthorized disclosure or dissemination using a reasonable standard of care. Neither party will use the other's Confidential Information for purposes other than those necessary to exercise their rights or perform their obligations under this Agreement. The receiving party shall inform the disclosing party in case of an unauthorized access or any other breach of confidentiality obligation. The receiving party is entitled to disclose Confidential Information of the disclosing party (i) to its employees, contractors, representatives, consultants, subcontractors, or service providers on a need to know basis if and to the extent such disclosure is indispensable for the performance of this Agreement and if they are bound by confidentiality obligations at least as protective as those contained herein; (ii) if the disclosure is mandatory by applicable law, valid court order or government agency (but, where permitted, the receiving party will first give prompt notice to the disclosing party); or (iii) upon prior written approval of the disclosing party. Notwithstanding the foregoing, Trek Health may freely use Aggregated Anonymous Data for its business purposes as set forth in this Agreement. Upon termination or expiration of this Agreement, each party will immediately cease to make use of the other's Confidential Information; provided, however, that the obligations of this Section 12 shall survive termination for a period of three (3) years, except with respect to trade secrets, which shall remain subject to confidentiality obligations for so long as they constitute trade secrets under applicable law.

### **13. Miscellaneous**

- a. This Agreement represents the entire agreement between Customer and Trek Health with respect to the subject matter hereof, and supersedes all prior or contemporaneous communications and proposals (whether oral, written or electronic) between Customer and Trek Health with respect thereto.
- b. The Agreement shall be governed by and construed in accordance with the laws of the State of California, excluding its conflicts of law rules. The parties consent to exclusive jurisdiction and venue in the state and federal courts located in San Francisco, California.
- c. All notices under this Agreement shall be in writing and shall be deemed to have been duly given when received, if personally delivered or sent by certified or registered mail, return receipt requested; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; or the day after it is sent, if sent for next day delivery by recognized overnight delivery service.
- d. Notices must be sent to the contacts for each party set forth on the Order Form. Either party may update its address set forth above by giving notice in accordance with this section.
- e. Except as otherwise provided herein, this Agreement may be amended only by a writing executed by both parties.
- f. Except for payment obligations, neither party shall be liable for any failure to perform its obligations hereunder where such failure results from any cause beyond such party's reasonable control, including, without limitation, the elements; fire; flood; severe weather; earthquake; vandalism; accidents; sabotage; power failure; denial of service attacks or similar attacks; Internet failure; acts of God and the public enemy; acts of war; acts of terrorism; riots; civil or public disturbances; strikes lock-outs or labor disruptions; any laws, orders, rules, regulations, acts or restraints of any government or governmental body or authority, civil or military, including the orders and judgments of courts (each a "Force Majeure Event").
- g. Neither party may assign any of its rights or obligations hereunder without the other party's consent; provided that either party may assign all of its rights and obligations hereunder without such consent to a successor-in-interest in connection with a sale of substantially all of such party's business relating to this Agreement.
- h. No agency, partnership, joint venture, or employment relationship is created as a result of this Agreement and neither party has any authority of any kind to bind the other in any respect. In any action or proceeding to enforce rights under this Agreement, the prevailing party shall be entitled to recover costs and attorneys' fees. If any provision of this Agreement is held to be unenforceable for any reason, such provision shall be reformed only to the extent necessary to make it enforceable. The failure of either party to act with respect to a breach of this Agreement by the other party shall not constitute a waiver and shall not limit such party's rights with respect to such breach or any subsequent breaches.

i. Trek Health may use Customer's name, logo, trademarks, and identifying marks to publicly identify Customer as a customer of Trek Health on Trek Health's website, in marketing materials, and in public communications, for promotional and marketing purposes. Neither party may use the other party's name, logo, trademarks, or identifying marks for any other purpose without the prior written consent of the other party.

j. To the extent required by Law, upon the written request of the Secretary of Health and Human Services, the Comptroller General or any of their duly authorized representatives, Provider shall make available those contracts, books, documents and records necessary to verify the nature and extent of the costs of providing Services under the Agreement. Such right of inspection shall be available for up to ten (10) years after the rendering of such Services. If Trek Health is requested to disclose books, documents or records pursuant to this Section 13(j) for any purpose, Trek Health shall notify Customer of the nature and scope of such request, and Trek Health shall make available, upon written request of Customer, all such books, documents or records. If Trek Health carries out any of the duties of the Agreement through a subcontract with a value of \$10,000.00 or more over a twelve (12) month period with a related individual or organization, Provider agrees to include this requirement in any such subcontract. This Section 13(j) is included pursuant to and is governed by the requirements to 42 USC § 1395x(v)(1) and the regulations thereto. No attorney-client, accountant-client, or other privilege will be deemed to have been waived by Customer or Trek Health by virtue of the Agreement.

k. Trek Health agrees to register with Customer's program for the monitoring of federal and state exclusion list sanctions. Customer's sanction monitoring program may be conducted by Customer individually or Customer's third party vendor, requiring registration of information and payment of an annual registration fee by Trek Health. Trek Health shall remain registered with Customer's sanction monitoring program until expiration or earlier termination of this Agreement.

## Appendix A: Support, Maintenance, and SLA

### Support and Maintenance:

- **Support Hours:** Monday–Friday, 9:00 AM – 5:00 PM PT (excluding holidays).
- **Support Channels:** web portal, or [ptcustomersuccess@trekhealth.io](mailto:ptcustomersuccess@trekhealth.io)
- **Response Times:**
  - **Severity 1:** Critical issues (complete inability to use the Data Services) – initial response within 1 hour during the scheduled support hours.
  - **Severity 2:** Major issues (large-scale events greatly impacting a portion of the Data Services but with the core Data Services still functional) – initial response within 4 hours during the scheduled support hours.
  - **Severity 3:** Minor issues (Minor issues that do not impact the core functionalities of the Data Services) – response within 1 business day.
  - **Severity 4:** General inquiries – response within 2 business days.
- **Maintenance Windows:** Scheduled maintenance will be announced with prior notice.
- **Data Update Schedule:** As specified in Order Form.

### Service Level Commitment:

1. **Uptime Guarantee:** The Data Service will be considered “Available” when it is accessible for use by Customer and its Authorized Users over the Internet and operating in material accordance with the Documentation. “Availability” for each calendar month will be calculated as follows: total minutes in the month minus minutes of Downtime divided by total minutes in the month, expressed as a percentage. “Downtime” means any scheduled maintenance, any Force Majeure Event, issues caused by Customer or its Authorized Users, and failures or interruptions attributable to third-party services, software, hardware, or network infrastructure not under Trek Health's control.
2. **Service Credits:** If the Uptime Guarantee is not met in any given calendar month (excluding scheduled maintenance), Customer will be eligible to receive a service credit on the subsequent billing cycle.
3. **Monthly Uptime Percentages**
  - a. Monthly Uptime Percentage 98.0% – 98.99% results in Service Credit of 1%.
  - b. Monthly Uptime Percentage 95.0% – 97.99% results in Service Credit of 3%.
  - c. Monthly Uptime Percentage 90.0% – 94.99% results in Service Credit of 5%.
  - d. Monthly Uptime Percentage less than 90.0% results in Service Credit of 10%.
4. **Procedures:** To claim a service credit, Customer must notify Trek Health in writing at the Support Channels within seventy-two (72) from the time of downtime, providing reasonable details of the claimed outage. Service credits will be applied to the next invoice(s) issued to Customer. If Customer elects not to renew the Agreement, such that the above credit cannot be applied, Customer will have the option to receive up to one free month of Service as its sole remedy in lieu of such credit. All credits provided hereunder are nonrefundable. Service credits are the sole and exclusive remedy for failure to meet the Uptime Guarantee and shall not exceed the Fees paid or payable for the affected month. Service credits shall constitute Customer's sole and exclusive remedy, and Trek Health's sole obligation, for any failure to meet the Uptime Guarantee.