

# BERRY VIRTUAL TERMS OF SERVICE

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These Terms of Service (the "Terms") are a legally binding agreement between Med Virtual Holdings Inc., a California corporation D/B/A "Berry Virtual", (the "Company") and the client named herein (the "Client"), each a "Party" and collectively the "Parties". The Client entered into a legally binding Master Services Agreement and together with the Terms and Berry Virtual's [Privacy Policy](#), form the "Agreement".

## 1. SERVICES.

- a. The services provided in respect of staffing individuals remotely are set out in the Agreement.

## 2. ACCEPTABLE AND RESTRICTED USE.

- a. Client shall not utilize our Services to breach any laws or in any way breach a third party's rights.
- b. Client shall abide by all human rights/employment laws that apply in its jurisdiction.
- c. Client shall not breach the anti-poaching provision set out in the Agreement, directly or indirectly.
- d. Client shall not pay any Company virtual assistant ("Company VA") directly.
- e. Client hereby agrees to channel all fees payable to Company VA pursuant to the Agreement solely as agreed upon herein. Any direct payment to a Company VA by Client shall be a breach of the Agreement and Company may, at its discretion, terminate the Agreement.

## 3. LIMITED LICENSE TO COMPANY.

Subject to the terms and conditions of the Agreement, Client hereby grants to Company a limited, non-exclusive, non-transferable, and non-sublicensable right and license to use, copy, store, transmit, and process Client information solely as necessary to provide the services for the duration of the Agreement.

## 4. FEES AND PAYMENT.

- a. **Fee types.** Upon execution of the Agreement, a set-up fee and additional recurring fees as authorized in Exhibit A of the Order Form shall apply.

- b. Recurring Fees.** The monthly service fees charged to the client will commence on the Order Form Effective Date (i.e., the date the VA commences work at the client).
- c. Transaction Charges.** Client hereby agrees to pay the following fees for the applicable transactions: (i) ACH transactions – no extra payment; (ii) credit card transactions – 3.0% of the total transaction amount.
- d. Discounts.** Any discounts offered to Client by Company, as set out in an Agreement, shall only be effective once, and will only be effective during the time frame noted in Exhibit B in the Master Services Agreement.
- e. Due Date.** On the first day that the virtual staff is deployed to the Client, the latter shall be charged and billed upfront as outlined in Exhibit B. Client will not be charged for any services (the virtual staff payment or the set-up fee) until the mutually agreed upon deployment day.

All recurring fees shall be due and payable in advance for each semi-monthly period on the 1st and 16th of each month. Each invoice will cover the service for the upcoming billing period.

In addition to the set-up fee, Client hereby agrees to pay a prorated services fee amount starting from the Agreement Effective Date to either the 1st of the next month or the 16th of the current month, whichever is sooner.

- f. Late Fees.** If the Client fails to remit payment for any outstanding invoice within five (5) calendar days from the due date, or upon the expiration of any applicable billing period, the following late fees shall apply:
  - i. A late fee equal to five percent (5%) of the total invoice amount shall be assessed if payment is not received within 6 to 15 days after the invoice date.
  - ii. A late fee equal to ten percent (10%) of the total invoice amount shall be assessed if payment is not received within 16 to 30 days after the invoice date.
  - iii. If the Client fails to remit payment after 31 days after the original invoice date, an additional recurring late fee of two hundred fifty dollars (\$250.00) per month shall be applied until the outstanding balance is paid in full.

All late fees shall be cumulative and automatically added to the Client's outstanding balance.

## 5. Termination of Agreement

- a. Termination by Client:** Client and Company agree that for Client to terminate this Agreement for any reason or no reason, prior written notice must be provided thirty (30) days in advance, Client must not be in default under the terms of this

Agreement, and all payments due by Client to Company shall be paid in full at the time said notice is provided. Written notice must be emailed to the Client's assigned Account Manager. Notice submitted in any other form will not suffice, and the Client's account shall remain in full force and effect. Client agrees and understands that during the thirty (30) day cancellation notice period, the Company VA(s) that have/has been assigned to Client will continue to work for Client and that Client must continue to pay Company for its retained services through the end of the thirty (30) day cancellation notice period.

- b. Termination by Company: Company may terminate this Agreement due to any Client material default. For purposes of this section, material default is defined as any of the following: Client's failure to timely pay Company for its monthly retained services; any violation of the Master Services Agreement; or any act that in the Company's sole discretion materially alters the nature of the Parties' working relationship. Client agrees and understands that at the time of termination by Company, any outstanding debt owed to Company by Client must be paid immediately upon termination.
- c. In the event of a successful termination of this Agreement, only the requirement that the Company provide future services and that Client pay for said future services shall terminate, with the remainder of this Agreement, along with the Company's Master Services Agreement, surviving and continuing to remain in full force and effect.

## **6. Company Insurance Policy Statement**

At all times, the Company agrees to maintain the requisite insurance protecting against certain covered mistakes, bad acts, errors, and omissions.

## **7. Indemnification and Limitation of Liability**

Client shall defend, indemnify, and hold harmless Company, its affiliates, parent companies, sister companies, principals, directors, officers, employees, agents, and representatives from and against any and all claims, damages, losses, liabilities, expenses, and costs (including, but not limited to, reasonable attorneys' fees and court costs) brought by any third party and/or employee or client of Client against Company caused by, arising from, or relating to: (a) any negligent or intentional act or omission of Client, (b) any failure of Client to perform and observe fully its obligations pursuant to this Agreement or to comply with relevant laws or regulation, (c) the negligence or willful misconduct of Company VAs that is a result of Client's directions and approval, or (d) any allegation that a Company VA caused injury and/or damage to any third party as a result of the directions and/or approval of Client. Client understands that some of the

services provided hereunder may be provided in whole or in part by the Company's affiliates and/or sister companies (the "Affiliated Companies"). Client agrees that it will only hold Company liable (and not the Affiliated Companies, nor any of their principals, directors, officers, employees, agents, and representatives) for any damage or harm Client incurs or suffers resulting from the acts or omissions of Company and/or the Affiliated Companies (including any and all breaches of contract, tortious conduct, or statutory violations) (collectively, "Company Bad Acts"). As such, Client hereby releases and holds harmless the Affiliated Companies (and their principals, directors, officers, employees, agents, and representatives) with regard to any and all Company Bad Acts.

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, COMPANY'S TOTAL LIABILITY (INCLUDING ITS AFFILIATES, PARENT COMPANIES, SISTER COMPANIES, PRINCIPALS, DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, AND REPRESENTATIVES) TO CLIENT FOR ANY CLAIMS, LOSSES, DAMAGES, COSTS, OR EXPENSES ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, SHALL BE LIMITED TO THE AVERAGE MONTHLY AMOUNT OF REVENUE COLLECTED BY COMPANY FROM CLIENT DURING THE THREE (3) MONTHS PRECEDING THE DATE THE LIABILITY AROSE. UNDER NO CIRCUMSTANCES SHALL COMPANY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY, CONSEQUENTIAL, SPECIAL, OR LOST PROFITS DAMAGES, EVEN IF COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

- 8. Waivers & Modifications** No modification or waiver of this Agreement shall be binding unless in writing and signed by the Parties hereto. The waiver by either Party of any breach by the other Party of any of its obligations hereunder or the waiver of such Party to exercise any of its rights in respect of such breach shall not be deemed to be a waiver of any subsequent breach. The Company reserves the right to update or modify the Terms as needed. Any changes these Terms will become part of this Agreement as though it were part of the original Agreement.
- 9. Successors and No Assignment.** This Agreement shall be binding upon and shall inure to the benefit of the Parties and their successors, assigns, executors, administrators, and personal representatives. The client may not assign this Agreement in full, nor in part.

#### **10. Mediation and Attorney Fee**

Any dispute between Company and Client related to this Agreement that is not resolved through informal discussion shall be submitted to a mutually acceptable mediation service or provider. The Parties to the mediation shall bear the mediation costs equally. This paragraph does not preclude a party from seeking equitable relief from a court of competent jurisdiction. If mediation is unsuccessful or does not occur, the Parties agree to enter into arbitration. The cost of arbitration shall be split equally (50/50).

In the event of any dispute or controversy arising under this Agreement, the prevailing party shall be entitled to recover from the other party costs and expenses, including attorney's fees incurred by the prevailing party related solely to the dispute or controversy.

### **11. Severability**

If any provision or clause of this Agreement or portion thereof shall be held by any court of competent jurisdiction to be illegal, void, or unenforceable in such jurisdiction, the remainder of such provisions shall not thereby be affected and shall be given full effect, without regard to the invalid portion.

### **12. Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of California. Any dispute arising out of or in connection with this Agreement shall be subject to the exclusive jurisdiction of the Superior Court for the State of California, County of Los Angeles.

### **13. Remedies**

Client acknowledges and agrees that compliance with the terms of this Agreement is necessary to protect the business and goodwill of the Company, and that a breach of this Agreement will irreparably and continually damage the Company, for which money damages may not be adequate. Client agrees that, in the event that Client breaches or threatens to breach any of the provisions of this Agreement, Company shall be entitled to a preliminary and permanent injunction in order to prevent the continuation of such harm, in addition to any and all other remedies available at law or in equity. Nothing in this Agreement shall be construed to prohibit the Company from pursuing any and all remedies available at law or in equity, and the Parties agree that all remedies shall be cumulative.

### **14. Notice**

Unless stated otherwise herein, any notice to be given to Client shall be sent by registered mail, certified mail, or any other method by which receipt can be confirmed to Client at Client's last known business address. Any notice to Company shall be sent by registered mail, certified mail, or any other method by which receipt can be confirmed to Company at 21731 Ventura Blvd, Suite #100, Woodland Hills, CA 91364.

**15.** The Company reserves the right to modify the Terms at any time. If there is a pricing change, the Company shall provide you with written notice of the same fifteen (15) days in advance of any change in pricing.

