

# FLEETNURSE TERMS OF SERVICE

**Last Updated:** September 22, 2021

These Terms of Service (“**Terms**”) are a legal agreement between you, as a healthcare professional (“**you**”), and FleetNurse, Inc., a Delaware corporation (“**FleetNurse**,” “**we**,” “**us**,” or “**our**”) and apply to your access to and use of our FleetNurse mobile application (“**Mobile App**”), the FleetNurse Materials (defined below), and the related services we provide you through your use of the Mobile App (“**Services**”).

PLEASE READ THESE TERMS CAREFULLY. BY CLICKING THE “I ACCEPT” BUTTON, COMPLETING THE REGISTRATION PROCESS, AND/OR OTHERWISE ACCESSING OR USING THE MOBILE APP AND OUR SERVICES, YOU AGREE THAT: (1) YOU HAVE READ, UNDERSTAND, AND AGREE TO BE BOUND BY THESE TERMS, (2) YOU ARE OF LEGAL AGE TO FORM A BINDING CONTRACT WITH FLEETNURSE, AND (3) YOU HAVE THE AUTHORITY TO ENTER INTO THESE TERMS. IF YOU DO NOT AGREE TO BE BOUND BY THESE TERMS, YOU MAY NOT ACCESS OR USE THE MOBILE APP OR OUR SERVICES.

## 1. General

1.1 **Binding Arbitration.** EXCEPT IF YOU OPT-OUT AND EXCEPT FOR CERTAIN TYPES OF DISPUTES DESCRIBED IN THE ARBITRATION PROVISION IN SECTION 11 BELOW, YOU AGREE THAT DISPUTES BETWEEN YOU AND US WILL BE RESOLVED BY BINDING, INDIVIDUAL ARBITRATION AND YOU WAIVE YOUR RIGHT TO PARTICIPATE IN A CLASS ACTION LAWSUIT OR CLASS-WIDE ARBITRATION.

1.2 **Changes to these Terms.** We may make changes to these Terms from time to time for any reason, including providing supplemental terms and conditions or documents that govern your relationship with FleetNurse. If we make changes, we will use commercially reasonable efforts to provide advance notice of the changes, and we will post the amended Terms and update the “Last Updated” date above. We may also attempt to notify you by sending an email notification to the address associated with your account or by providing notice through the Mobile App. Unless we say otherwise in our notice, the amended Terms will be effective immediately and your continued access to and use of the Mobile App and our Services will confirm your acceptance of the changes. If you do not agree to the amended Terms, you must stop accessing and using the Mobile App and our Services.

1.3 **Changes to the Mobile App or Services.** We reserve the right to modify, suspend, or stop the Mobile App or our Services (or any part thereof) at any time upon written notice to you. You agree that FleetNurse will not be liable to you or any third party for any modification, suspension, or cessation of the Mobile App or our Services. If you do not agree to any modifications, suspension, or cessation of the Mobile App or our Services, you may terminate these Terms upon written notice to FleetNurse, which is your sole and exclusive remedy for any such modification, suspension, or cessation. You acknowledge that FleetNurse has no express or

implied obligation to provide the Mobile App or Services, or any part thereof, now or in the future.

1.4 **Privacy.** Please refer to our Privacy Policy located at <https://www.fleetnurse.com/privacy-policy/> for information about how we collect, use, and disclose information about you, including the account registration information you provide and information we collect as part of the verification process.

## 2. **Services and User Accounts**

2.1 **Our Services.** Our Mobile App enables the provision of our Services, which is an online venue that connects independent third-party providers of medical services (e.g., healthcare facilities or healthcare systems) (each a “**Facility**”) with medical professionals (e.g., nurses or medical technicians) for short-term staffing positions. A Facility FleetNurse has contracted with may submit to us a request to fill one or more short-term positions (“**Position**”) for the provision of healthcare services by a healthcare professional (“**Healthcare Services**”). Through our Mobile App, we will inform you of available Positions, including time, dates, location, type of healthcare services, and other Facility requirements for which you are qualified based on the relevant information and criteria you provided during the registration process. You may accept or decline at your discretion Positions presented to you through the Mobile App.

2.2 **User Account.** You are required to create an account, register with us, and obtain our approval to use the Mobile App and access the Services. When creating an account, you will be required to provide certain personal information about yourself and establish a username and password. You agree to provide accurate, current, and complete information about your background, experience, and credentials, and it is your responsibility to keep this information up to date and accurate. FleetNurse may conduct phone interviews and other verification processes as part of your registration with FleetNurse. You will not create an account using a false identity or information, or on behalf of someone other than yourself. FleetNurse reserves the right to suspend or terminate your account if any of the information you provided turns out to be inaccurate, false, or misleading. You are responsible for maintaining the confidentiality of your password and username and/or email address and the activities or actions that occur under your account, whether or not you have authorized such activities or actions. You must promptly notify FleetNurse in writing if you discover or suspect that someone has accessed your account without your permission.

2.3 **Verification.** As part of the registration process, you will be required to submit information to FleetNurse and/or its third-party vendors to conduct a background check, verify your education, licenses, registration, and health records, perform drug screenings, and conduct a skills assessments. You agree to provide accurate, current, complete, and truthful information and any requested documentation. By submitting any such information or documentation for the verification process, you agree to be bound by the terms and conditions applicable to any such third-party vendors providing the verification services. You acknowledge and agree that all information you submit directly to such vendors in connection with the verification process is separately collected, processed, and stored by the respective vendor and is subject to its posted privacy policy. FLEETNURSE WILL NOT BE RESPONSIBLE FOR AND WILL HAVE NO LIABILITY IN RESPECT OF ANY SERVICES PROVIDED BY ANY SUCH VENDORS.

2.4 **Healthcare Services.** Once you accept a Position through the Mobile App, you are required to show up at the designated time and location and provide the Healthcare Services for the entirety of the shift. If you do not show for any Position you accepted, we may immediately terminate your ability to use the Mobile App and/or Services at our sole discretion.

2.5 **Electronic Communications.** You and FleetNurse will use electronic means to communicate, whether you use the Mobile App or whether FleetNurse posts notices through the Mobile App or the Services or communicates with you via email or through phone calls or text messages at the phone number you provided when you created your account. You hereby (a) consent to receive communications, including notifications, from FleetNurse in an electronic form or via text message or phone call and (b) agree that all terms and conditions, agreements, notices, disclosures, and other communications that FleetNurse provides to you electronically satisfy any legal requirement that such communications would satisfy if they were in a hardcopy writing. You are solely responsible for any costs you incur when receiving text messages from us, including any carrier charges that apply for receiving such text messages.

### 3. **Healthcare Services Terms**

3.1 **Independent Contractor; No Employment.** You and FleetNurse maintain at all times an independent contractor relationship with one another, and these Terms do not form any employee, agent, or partnership relationship. You acknowledge and agree that you are not employed by FleetNurse as an employee. FleetNurse does not, in any way, supervise, direct, or control the work or services you will be performing for the Facility. We do not set your work hours, location of work, or the scope of your duties, and we are not responsible for providing you with any training or equipment, tools, or materials needed for you to provide the Healthcare Services. You will not be entitled to, and may not participate in (on either a prospective or retrospective basis), any of the benefits that FleetNurse makes available to its employees, such as group insurance, profit-sharing, or retirement plans or benefits. Further, you do not have any authority, whether apparent, implied, or express, to make any binding commitments or contracts on behalf of FleetNurse.

3.2 **Qualifications.** You are solely responsible for ensuring you are properly trained, skilled, and qualified to perform the Healthcare Services for the Facility at which you accepted the Position. You represent and warrant to us that (a) you are duly licensed (as applicable) and have the experience, qualifications, and ability to perform each Position you accept; and (b) you will perform the Healthcare Services for any Position you have accepted (i) in a professional manner using no less than the skill and care of a properly trained and licensed individual and (ii) to the reasonable satisfaction of the Facility that submitted the Position.

3.3 **Professional Registration Data.** You represent and warrant to us that: (a) any healthcare related license or registration numbers you provide us are valid and in force; (b) any such licenses or registrations will remain in full force for so long as you make yourself available to provide Healthcare Services to Facilities; (c) you will promptly notify us in writing and all Facilities that you have agreed to perform Healthcare Services if you become barred from practicing in any jurisdiction, lose any or your licenses, are facing disciplinary actions, or make any changes to your registration data.

3.4 **No Reimbursement.** You acknowledge and agree that we do not and cannot reimburse you for any expenses you incur as a result of your performance of Healthcare Services or for use of the Mobile App or our Services.

3.5 **No Guarantees on Available Positions.** You acknowledge and agree that we do not and cannot guarantee that Facilities will request any Healthcare Services which you are qualified to provide, that you will be provided any Positions, or that a Position will not be cancelled by a Facility. No Facility may require an exclusive relationship between you and the Facility, and you are free at all times to perform Healthcare Services with persons or businesses other than any Facility at which you have accepted a Position.

## 4. **Limited License**

4.1 **FleetNurse Materials.** The Mobile App, and all materials contained within or made available through the Mobile App, including text, graphics, images, code, designs, icons, photographs, video clips, and written and other materials (but excluding Your Content, as defined in Section 5.2 below) (collectively, “**FleetNurse Materials**”) are protected by copyright, trademark, trade dress, patent, and/or other intellectual property laws, and unauthorized use of the Mobile App and FleetNurse Materials may violate such laws and these Terms.

4.2 **License Grant.** The Mobile App and FleetNurse Materials are licensed, not sold. Subject to your compliance with these Terms, FleetNurse grants you during the Term a limited, non-exclusive, revocable right to install, access, and use the Mobile App and any FleetNurse Materials on any mobile device that you own or control to obtain information on and make decisions regarding available Positions. This license does not allow you to distribute or make the Mobile App or any FleetNurse Materials available over a network or to any other parties. These Terms also govern any updates or replacements to the Mobile App or FleetNurse Materials, unless separate terms accompany such updates or replacements, in which case the separate terms will apply. You acknowledge that FleetNurse may use the services of third-party contractors, including third-party data centers and cloud providers, in providing the Services using the Mobile App and that the Services, including all data being transmitted, stored, and exchanged in connection with the Services and your use of the Mobile App, are hosted and processed on a network owned and maintained by a third-party service provider.

4.3 **License Limitations.** Section 4.2 above states the entirety of your license rights to the Mobile App and FleetNurse Materials. Without limiting the foregoing, you will not do, or authorize or permit any third party to do, any of the following: (a) rent, lease, lend, sell, redistribute, sublicense, or otherwise transfer the Mobile App or any FleetNurse Materials; (b) use the Mobile App or any FleetNurse Materials for any purpose other than your own personal use; (c) copy, reverse engineer, decompile, disassemble or attempt to discover the source code for the Mobile App or any FleetNurse Materials; (d) modify, alter, or create any derivative works of the Mobile App or any FleetNurse Materials; (e) remove, alter or obscure any copyright, trademark, or other proprietary rights notice on or in the Mobile App or any FleetNurse Materials; (f) work around any technical limitations in the Mobile App; or (g) use the Mobile App or any FleetNurse Materials for any purposes for which they are not designed or to develop a similar or competitive product, service, or other offering.

4.4 **Suspensions.** FleetNurse may temporarily suspend your access to any portion or all of the Mobile App or our Services at any time if FleetNurse reasonably determines that: (a) there is a threat or attack (including a denial of service attack) on, or a security risk to, the Services or FleetNurse's or its third party's hosting network or infrastructure; (b) an event has occurred or is reasonably likely to occur that may create a risk to the Services or the Facilities; (c) you are using the Mobile App or our Services for fraudulent or illegal activities or in violation of these Terms; (d) if FleetNurse is prohibited by an order of a court or other governmental agency from providing any part of the Services. FLEETNURSE WILL HAVE NO LIABILITY FOR ANY DAMAGE, LIABILITIES, LOSSES (INCLUDING ANY LOSS OF DATA OR PROFITS) OR ANY OTHER CONSEQUENCES THAT YOU MAY INCUR OR EXPERIENCE BECAUSE OF ANY SERVICE SUSPENSION IN ACCORDANCE WITH THIS PARAGRAPH.

## 5. Ownership

5.1 **Ownership by FleetNurse.** Subject to the use rights granted under these Terms, as between the parties, FleetNurse owns and retains all right, title, and interest in and to the Mobile App, FleetNurse Materials, and the Services, its documentation, and all related intellectual property rights. Except for the rights expressly granted in these Terms, no other rights are granted to you, whether by implication, estoppel, waiver, or otherwise.

5.2 **Your Content and License.** All content that you upload, post, transmit, or otherwise make available through the Mobile App or the Services is referred to as "**Your Content.**" We do not claim ownership of Your Content. You hereby grant to FleetNurse a fully paid, royalty-free, perpetual, irrevocable, worldwide, non-exclusive, and fully sublicensable right and license to use, license, distribute, reproduce, modify, adapt, publicly perform, and publicly display Your Content that you submit. You warrant that you have all rights, including intellectual property rights, in and to Your Content as necessary to grants such right and license to FleetNurse. You agree that you, not FleetNurse, are fully and solely responsible for all of Your Content that you upload, post, transmit, or otherwise make available through the Mobile App or our Services.

5.3 **Analytics Data.** Notwithstanding anything to the contrary in these Terms, FleetNurse may generate, use, transfer, and/or disclose to third parties Analytics Data in order to perform data analytics; to monitor, enhance, modify, and improve the Services; to develop new tools, products, services, features, and functionality; and for any other lawful purpose. FleetNurse owns and retains all rights to Analytics Data, and no rights are granted to you, whether by implication, estoppel, waiver, or otherwise in or to any Analytics Data. "**Analytics Data**" means information gathered, prepared, computed, originated, or stored by FleetNurse resulting from the use of the Mobile App or FleetNurse Materials or provision of the Services, provided that any such Analytics Data contains no personally identifiable information and is used only in aggregated or de-identified form.

5.4 **Feedback.** You may from time to time voluntarily provide suggestions, enhancements, recommendations, requests for features or functionality, comments, or other feedback ("**Feedback**") to FleetNurse regarding the Mobile App or our Services. Feedback, even if designated as "confidential" or "proprietary" by you, will not create any confidentiality or other obligation for FleetNurse and you hereby grant FleetNurse a royalty-free, fully paid-up,

worldwide, transferable, sublicensable, irrevocable, perpetual license to use such Feedback for any purpose without any compensation or other obligation to you.

## 6. Fees and Payment Terms

6.1 **Fees.** The fees payable to you for your provision of Healthcare Services for a specific Position will be disclosed at the time you are informed about the available Position, which are typically reflected as an hourly rate (the “**Fees**”). All Fees listed are in US dollars. You will be entitled to receive the full amount of the Fees only upon your full provision of Healthcare Services for the relevant Position. If the Facility informs us that you did not show up for any Position you accepted, we have no obligation to pay you any Fees for that Position. If the Facility informs us that you only partially performed, you will only be paid Fees for the Healthcare Services you actually rendered.

6.2 **Payment.** FleetNurse will process the payment of the Fees owed to you as a direct deposit into your bank account. FleetNurse will pay the Fees on a weekly basis following confirmation from the Facility that you rendered the Healthcare Services. FleetNurse will report amounts paid to you by filing Form 1099-MISC with the Internal Revenue Services, as required by applicable law. If you have any questions or concerns regarding how we calculated the amounts of Fees paid to you or believe an error was made, please contact us through the Mobile App or at the contact information listed in [Section 13](#).

6.3 **Bank Account Information.** You agree to enter your current bank account information within your account and agree that we or our third-party payment processors may transfer the Fees you are owed. You, and not FleetNurse, are solely responsible for the accuracy of your bank account information, including your bank account number and routing information. WE DISCLAIM ALL LIABILITY RELATED TO ERRORS IN FUND DEPOSITS DUE TO INACCURATE OR INCOMPLETE BANK ACCOUNT INFORMATION.

6.4 **Taxes.** You are solely responsible for all tax returns and payments required to be filed with or made to any U.S. federal, state, or local tax authority with respect to your performance of Healthcare Services and receipt of Fees under these Terms. You agree to accept exclusive liability for complying with all applicable state and federal laws, including laws governing self-employed individuals, if applicable, such as laws related to payment of taxes, social security, disability, and other contributions based on Fees paid to you. FleetNurse will not withhold or make payments for taxes, social security, unemployment insurance or disability insurance contributions, or obtain workers’ compensation insurance on your behalf. You hereby agree to indemnify and defend FleetNurse against any and all such taxes or contributions, including penalties and interest. We cannot and do not offer tax advice to any users.

## 7. Term and Termination

7.1 **Term.** These Terms will commence on the date you accept them and will continue while you continue to use our Mobile App or use the Services, unless terminated earlier in accordance with these Terms (the “**Term**”).

7.2 **Termination.** FleetNurse may terminate these Terms and your right to access or use the

Mobile App or the Services at any time upon written notice to you if you are in breach of these Terms. You may terminate these Terms by providing FleetNurse 10 days' prior written notice of termination.

7.3 **Effect of Termination.** Upon any termination of these Terms, all rights and licenses granted to you under these Terms will immediately cease, including your ability to use the Mobile App or access any available Positions through our Services. We will pay you all unpaid Fees earned by you up to the effective date of termination. Your obligations with respect to confidentiality as set forth in Section 8 below will survive following any expiration or termination of these Terms.

7.4 **No Subsequent Registration.** If we discontinue your ability or right to access the Mobile App or our Services, you agree that you will not attempt to re-register or access the Mobile App, for example, by using a different user name or through someone else's account.

## 8. Confidentiality

In your use of the Mobile App, the Services, or your engagement with FleetNurse, you may have access to or receive certain information of, about, or relating to FleetNurse (including the Services and FleetNurse Materials), any Facilities, and Positions (collectively, "**Confidential Information**"). Confidential Information includes information relating to any of the Facilities, Positions, and FleetNurse, including its current or proposed business, financial statements, budgets and projections, customer identifying information, potential and intended customers, employers, products, computer programs, technology, specifications, manuals, software, analyses, strategies, marketing plans, business plans, and other confidential information, provided orally, in writing, by drawings, or by any other media. For avoidance of doubt, Confidential Information includes the identity of any Facility or prospective facility of FleetNurse, a Facility's staffing needs or requests, and any information related to Positions, such as availability, nature of positions or services, and scheduling. You (a) will protect and keep the Confidential Information in strict confidence; (b) will not disclose the Confidential Information to any third party; and (c) will use the Confidential Information solely for the purposes set forth in these Terms. Without limiting the generality of the foregoing, you will not, acting alone or in conjunction with others, directly or indirectly, use or disclose Confidential Information to (i) accept any employment or engagement opportunity of any kind with any Facility, Facility affiliate or any entity or subsidiary owned or substantially owned by any Facility or Facility affiliate, or prospective facility of FleetNurse, be it temporary, temporary-to-hire, contract, contract-to-hire, full-time hire, or consulting arrangement, except as expressly provided for in these Terms, or otherwise circumvent FleetNurse's business relationship with any Facility, (ii) independently of these Terms offer or provide to any Facility healthcare staffing or other similar services to those that FleetNurse provides Facilities, or (iii) encourage, enable, or facilitate any third-party to do any of the foregoing (collectively, "**Non-Circumvent Obligations**"). The foregoing does not prohibit employment or engagement with a Facility in response to a general solicitation of employment or engagement by a Facility in the ordinary course of its business, as shown by publicly available information. The obligations under this Section 8 will not apply to any information that you can demonstrate through written evidence: (x) is at the time of disclosure, or rightfully becomes, publicly available other than by a breach of any duty owed to FleetNurse or (y) is rightfully received from a third party without any obligation of confidentiality. If any of the exceptions in the preceding sentence apply to any Confidential

Information, your Non-Circumvent Obligations will nevertheless apply with respect to such information during the Term and for a period of 12 months thereafter. You may disclose FleetNurse Confidential Information to the extent it must be disclosed by law or court order, provided you promptly notify FleetNurse in writing of such law or court order, and upon request, reasonably cooperate with FleetNurse in seeking confidential treatment of such Confidential Information or other appropriate relief from such law or order. The parties expressly acknowledge and agree that no adequate remedy may exist at law for an actual or threatened breach of this Section 8 and that in such event, FleetNurse will be entitled to seek immediate injunctive and other equitable relief, without waiving any other rights or remedies available to it.

## **9. WARRANTY DISCLAIMER AND LIMITATION ON LIABILITY**

**9.1 WARRANTY DISCLAIMER.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE MOBILE APP, FLEETNURSE MATERIALS, AND SERVICES ARE BEING PROVIDED TO YOU “AS IS” WITHOUT WARRANTY OF ANY KIND. FLEETNURSE EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. IN PARTICULAR, FLEETNURSE AND ITS AFFILIATES MAKE NO WARRANTY THAT (A) THE MOBILE APP, FLEETNURSE MATERIALS, OR SERVICES WILL MEET YOUR REQUIREMENTS; (B) YOUR USE OF THE MOBILE APP, FLEETNURSE MATERIALS, OR SERVICES WILL BE TIMELY, UNINTERRUPTED, SECURE, COMPLETE, OR ERROR-FREE; (C) ANY INFORMATION OBTAINED BY YOU AS A RESULT OF THE MOBILE APP, FLEETNURSE MATERIALS, OR SERVICES WILL BE ACCURATE OR RELIABLE; (D) ANY DEFECTS OR ERRORS IN THE MOBILE APP, FLEETNURSE MATERIALS, OR SERVICES WILL BE CORRECTED; OR (E) YOU WILL REALIZE ANY AMOUNT OF ECONOMIC BENEFIT IN CONNECTION WITH THESE TERMS OR USE OF THE MOBILE APP OR OUR SERVICES.

ANY MATERIAL TRANSMITTED, STORED, ACCESSED, OR OTHERWISE MAINTAINED THROUGH THE USE OF THE MOBILE APP OR SERVICES IS DONE SO AT YOUR OWN DISCRETION AND RISK, AND YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR DEVICES OR LOSS OR CORRUPTION OF DATA THAT RESULTS FROM ANY SUCH USE OF THE MOBILE APP OR SERVICES. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM FLEETNURSE OR THROUGH OR FROM THE MOBILE APP OR SERVICES WILL CREATE ANY WARRANTY.

**9.2 DISCLAIMER OF CERTAIN DAMAGES.** YOU UNDERSTAND AND AGREE THAT IN NO EVENT WILL FLEETNURSE, ITS AFFILIATES, OR ITS VENDORS BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY: (A) LOSS OF PROFITS, REVENUE, OR DATA; (B) INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATING TO THE MOBILE APP, FLEETNURSE MATERIALS, OR OUR SERVICES; (C) DAMAGES OR COSTS DUE TO PROCUREMENT OF SUBSTITUTE SERVICES; OR (D) DAMAGES, LOSSES, OR LIABILITY RESULTING



FROM YOUR PROVISION OR FAILURE TO PROVIDE ANY HEALTHCARE SERVICES, INCLUDING FROM YOUR ACTS OR OMISSIONS, NEGLIGENCE, OR INTENTIONAL, RECKLESS, OR WILLFUL MISCONDUCT, IN EACH CASE WHETHER OR NOT FLEETNURSE BEEN ADVISED OF THE POSSIBILITY OF ANY SUCH DAMAGES AND REGARDLESS OF THE CAUSE OF ACTION WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, OR OTHERWISE.

**9.3 NO LIABILITY FOR INTERACTIONS WITH FACILITIES.** YOU ACKNOWLEDGE AND AGREE THAT FLEETNURSE IS NOT ABLE TO CONTROL OR SUPERVISE YOUR INTERACTIONS, TRANSACTIONS, OR OTHER ACTIVITIES WITH FACILITIES AND THAT NEITHER FLEETNURSE NOR ANY OF ITS AFFILIATES IS RESPONSIBLE FOR ANY DAMAGES, LOSSES, OR LIABILITY ARISING AS A RESULT OF ANY SUCH INTERACTIONS, TRANSACTIONS, OR ACTIVITIES, INCLUDING YOUR PROVISION OR FAILURE TO PROVIDE HEALTHCARE SERVICES, THE CANCELANATION OF ANY POSITIONS, OR ANY LOSSES, HARM, OR DAMAGES YOU SUFFER WHILE ONSITE AT THE FACILITY. IN CASE OF ANY DISPUTE BETWEEN YOU AND A FACILITY, FLEETNURSE RESERVES THE RIGHT, BUT HAS NO OBLIGATION, TO (A) MONITOR ANY SUCH DISPUTE OR (B) UPON YOUR REQUEST, INTERVENE IN SUCH DISPUTE FOR THE PURPOSE OF RESOLVING THE DISPUTE, PROVIDED THAT FLEETNURSE WILL NOT BE RESPONSIBLE FOR ANY LOSSES OR DAMAGES WHATSOEVER ARISING FROM ANY MONITORING OR INTERVENTION OF SUCH ACTIVITIES.

**9.4 CAP ON LIABILITY.** UNDER NO CIRCUMSTANCES WILL FLEETNURSE, ITS AFFILIATES, OR ITS VENDORS BE LIABLE TO YOU FOR MORE THAN THE TOTAL AMOUNT OF FEES PAID TO YOU UNDER THESE TERMS. MULTIPLE CLAIMS WILL NOT EXPAND THIS LIMIT. THE FOREGOING WILL NOT, HOWEVER, APPLY TO ANY LIABILITY OF FLEETNURSE OR ITS AFFILIATES FOR ITS GROSS NEGLIGENCE, FRAUD, OR WILLFUL MISCONDUCT.

**9.5 EXCLUSION OF DAMAGES.** CERTAIN JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES. IF THESE LAWS APPLY TO YOU, SOME OR ALL OF THE ABOVE EXCLUSIONS OR LIMITATIONS MAY NOT APPLY, AND YOU MIGHT HAVE ADDITIONAL RIGHTS.

## **10. Indemnity**

You agree to defend, indemnify, and hold harmless FleetNurse, its affiliates, directors, officers, employees, contractors, and agents from any losses, damages, demands, or other liability (including reasonable attorneys' fees) resulting from a third-party claim relating to or arising from: (a) any data, content, or information you submit, post, transmit, or otherwise make available through the Mobile App or your account with us; (b) your use of the Mobile App or our Services; (c) any violation by you of these Terms, the rights of others, or applicable law or regulations; or (d) your provision of the Healthcare Services, whether resulting from your acts or omissions, negligence, or otherwise.

## 11. Dispute Resolution; Arbitration

**Please read the following section carefully because it requires you to arbitrate certain disputes and claims with FleetNurse and limits the manner in which you can seek relief from us.**

Except for small claims disputes in which you or FleetNurse seek to bring an individual action in small claims court or disputes in which you or FleetNurse seeks injunctive or other equitable relief for the alleged unlawful use of intellectual property, you and FleetNurse waive your rights to a jury trial and to have any dispute arising out of or related to these Terms or the Mobile App or our Services resolved in court. Instead, all disputes arising out of or relating to these Terms, the Mobile App, or our Services will be resolved through confidential binding arbitration held in Portland, Oregon in accordance with the Streamlined Arbitration Rules and Procedures (“**Rules**”) of the Judicial Arbitration and Mediation Services (“**JAMS**”), which are available on the JAMS website and hereby incorporated by reference. You either acknowledge and agree that you have read and understand the rules of JAMS or waive your opportunity to read the rules of JAMS and any claim that the rules of JAMS are unfair or should not apply for any reason.

You and FleetNurse agree that any dispute arising out of or related to these Terms, the Mobile App, or our Services is personal to you and FleetNurse and that any dispute will be resolved solely through individual arbitration and will not be brought as a class arbitration, class action or any other type of representative proceeding.

You and FleetNurse agree that these Terms affect interstate commerce and that the enforceability of this Section 12 will be substantively and procedurally governed by the Federal Arbitration Act, 9 U.S.C. § 1, et seq. (the “**FAA**”), to the maximum extent permitted by applicable law. As limited by the FAA, these Terms and the JAMS Rules, the arbitrator will have exclusive authority to make all procedural and substantive decisions regarding any dispute and to grant any remedy that would otherwise be available in court; provided, however, that the arbitrator does not have the authority to conduct a class arbitration or a representative action, which is prohibited by these Terms. The arbitrator will only conduct an individual arbitration and will not consolidate more than one individual’s claims, preside over any type of class or representative proceeding or preside over any proceeding involving more than one individual. You and FleetNurse agree that for any arbitration you initiate, you will pay the filing fee and FleetNurse will pay the remaining JAMS fees and costs. For any arbitration initiated by FleetNurse, FleetNurse will pay all JAMS fees and costs. You and FleetNurse agree that the state or federal courts of the State of Oregon and the United States sitting in Portland, Oregon have exclusive jurisdiction over any appeals and the enforcement of an arbitration award.

**ANY CLAIM ARISING OUT OF OR RELATED TO THESE TERMS, THE MOBILE APP, OR OUR SERVICES MUST BE FILED WITHIN ONE YEAR AFTER SUCH CLAIM AROSE; OTHERWISE, THE CLAIM IS PERMANENTLY BARRED, WHICH MEANS THAT YOU AND FLEETNURSE WILL NOT HAVE THE RIGHT TO ASSERT THE CLAIM.**

You have the right to opt out of binding arbitration within 30 days of the date you first accepted the terms of this Section 11 by sending us a written notice at the contact address provided under

the “Notices” section. In order to be effective, the opt out notice must include your full name and clearly indicate your intent to opt out of binding arbitration. By opting out of binding arbitration, you are agreeing to resolve Disputes in accordance with Section 12 below.

## **12. Governing Law; Venue**

These Terms and any dispute relating to them or to the Mobile App or our Services will be expressly governed and construed in accordance with the laws of the State of Oregon, without regard to conflict of law principles. You expressly agree that the exclusive jurisdiction for any claim or action arising out of or relating to these Terms or your use of the Mobile App or Services will be filed only in the state or federal courts located in Portland, Oregon, and you further agree and submit to the exercise of personal jurisdiction of such courts for the purpose of litigating any such claim or action.

## **13. Notice**

If you have questions, complaints, or claims with respect to these Terms, the Mobile App, or our Services, please contact us at the contact information below. We will do our best to address your concerns. If you feel your concerns were not addressed completely, we invite you to let us know for further investigation: FleetNurse, Inc., 4640 SW Macadam Avenue, Suite 200D, Portland, OR 97239. Email: [info@fleetnurse.com](mailto:info@fleetnurse.com).

## **14. Force Majeure**

Neither party will be liable for any failure to perform due to acts of God or other events beyond a party’s reasonable control, including power failures or surges, fires, malfunctioning or failure of third-party network connections, communication lines, or the Internet, earthquakes, civil or public disturbances, epidemics or pandemics, or any laws, rules, regulations, or acts of any governmental body or authority. If any such circumstances occur, the affected party’s time for performance will be extended for a period equal to the duration of the delay caused thereby, and any reasonable extensions where necessary. The affected party will promptly resume performance upon the end of any force majeure event. If the force majeure event adversely impacts or delays a party’s activities under these Terms for more than 21 consecutive days, the other party may terminate these Terms upon written notice with immediate effect without liability or penalty other than any liability accruing before the effective date of such termination.

## **15. General Terms**

Any delay or failure to exercise any right under these Terms or any law by you or FleetNurse does not mean FleetNurse or you waive that right in the future. If any term or provision of these Terms is determined to be invalid or unenforceable to any extent, such term or provision or any portion thereof will be interpreted to best reflect the parties’ intent, and if no such interpretation can be provided, it will be struck from these Terms, and in any event, the remainder of these Terms will not be affected and will continue to be valid and enforceable to the fullest extent permitted by law. The headings of these Terms are for reference only and will not be used to interpret the meaning of these Terms. Any reference to “includes” or “including” will be understood to be exemplary

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