

## **Superpower Health** **Terms of Service**

Effective Date: [4/10/2023]

These Terms of Service (“**Terms**”) govern your access to and use of the services provided by Superpower Health, Inc. through the websites located at superpower.com and other related websites and platforms (collectively, the “**Site**”) (collectively, “**Superpower**”, “**we**”, “**us**”, and the “**Services**”).

Please read these Terms carefully before using the Site or the Services. By accessing or using the Site, you agree to be bound by these Terms. If you are accepting these Terms for another person (“**Family Member**”) as such Family Member’s lawful guardian, conservator, or custodian, you agree to the terms, conditions, and notices contained or referenced herein on behalf of such Family Member. For purposes of these Terms, “you” means you on behalf of yourself and your Family Members.

### **Services**

Superpower is a non-clinical administrative, billing and technology services entity that will provide you with convenient and streamlined access to third-party laboratory testing services for blood testing to evaluate biomarkers as set described at check out (“**Labs**”) and connect you with Elite Home Detox, P.C. and its clinical care providers who can order and interpret your Labs (collectively, “**Professional(s)**”) via the Site. Elite Home Detox, P.C. and its clinicians are independent from and are unaffiliated with Superpower. Superpower helps coordinate with providers, phlebotomists, and laboratories and provides informational content relating to wellness, diet, and lifestyle to help you take ownership of your healthcare journey via the Site. You will be able to input information about your lifestyle, connect your wearable devices to upload your biometric data, request laboratory testing, view the results of your laboratory testing, and connect with Professional(s) regarding your Labs via the Site. You will receive your Lab results via the Site and email, and any abnormal results will be flagged. Superpower will make all reasonable efforts to notify you of abnormal or critical lab values via the Site and by email and/or phone contact. You are responsible for checking your laboratory results and completing any necessary follow up with your primary care provider. Superpower does not provide genetic, allergy, or ancestry testing.

You agree that these Terms govern your access to and use of the Site and the Services offered by Superpower.

Please refer to our [Privacy Policy](#) to learn how we use, share, and protect your personal information and the [Notice of Privacy Practices](#) to learn how the Professional(s), and Superpower on their behalf, use, share, and protect your protected health information.

### **Disclosures and Disclaimers**

**YOU UNDERSTAND THAT SUPERPOWER DOES NOT PROVIDE MEDICAL ADVICE AND WILL NOT PROVIDE A DIAGNOSIS, OR MEDICAL TREATMENT. IF YOU THINK YOU MAY HAVE A MEDICAL CONDITION OR ISSUE YOU AGREE TO**

**CONSULT YOUR HEALTHCARE PROVIDER. YOU UNDERSTAND THAT THERE WILL BE NO PROVIDER-PATIENT RELATIONSHIP FORMED WITH SUPERPOWER VIA YOUR USE OF THE SITE. OUR SERVICES ARE NOT A REPLACEMENT FOR PROFESSIONAL MEDICAL CARE. YOU SHOULD NOT DELAY TREATMENT OR ADVICE BY YOUR MEDICAL PROFESSIONAL BASED ON INFORMATION PROVIDED VIA THE SITE.**

**YOU AGREE TO SEEK ADVICE FROM YOUR HEALTHCARE PROVIDER OR OTHERWISE SEEK ADVICE FROM A QUALIFIED HEALTHCARE PROFESSIONAL PRIOR TO USING OUR SITE AND SERVICES. YOU SHOULD NOT INTERPRET ANY INFORMATION PROVIDED THROUGH THE SITE, PROFESSIONAL(S), OR YOUR LABORATORY RESULTS AS A TREATMENT PLAN OR COURSE OF ACTION. PROFESSIONAL(S) WILL ONLY INTERPRET AND PROVIDE EDUCATION REGARDING YOUR LAB RESULTS AND WILL NOT TREAT YOU OR BE CONSIDERED YOUR TREATING PROVIDER.**

**WE DO NOT HANDLE MEDICAL EMERGENCIES. IF YOU ARE CONCERNED THAT YOU ARE EXPERIENCING A MEDICAL EMERGENCY, PLEASE DIAL 9-1-1 IMMEDIATELY.**

Superpower does not practice medicine or any other licensed profession and does not interfere with the practice of medicine or any other licensed profession by Professional(s) or other third parties. You understand that Superpower does not have any control over the Professional(s) and that we will not be liable for any actions or inactions performed by Professional(s) via the Site or otherwise.

Superpower does not provide phlebotomy services and will not perform your blood draws, but will provide you access to and coordinate with GetLabs, an independently operated and unaffiliated company that will send phlebotomists to your location to draw your blood. By using the Site and the services and providing Superpower with your desired location, you authorize us to request that GetLabs draw your blood from that location. You understand that Superpower does not have any control over the operations of GetLabs and that we will not be liable for any actions or inactions performed by Get Labs. By using our Site and Services, you understand that the [terms and conditions](#) and [privacy policy](#) of GetLabs will apply to services performed by Get Labs.

**You understand that GetLabs will draw at least ten vials of blood. You understand that laboratory testing requires obtaining a blood sample, which could result in bruising, hematoma, infection, lightheadedness, bleeding, fainting, and discomfort. You agree to consult with your medical provider in advance of using our services.**

Superpower does not own or operate a laboratory. All laboratory testing services will be performed by [Labcorp](#) or [Quest Diagnostics](#), each of which is an independently owned and unaffiliated laboratory. By using our Site and Services, you understand that the terms and conditions of the applicable laboratory apply to services performed by such laboratory. You understand that Superpower does not have any control over the operations of LabCorp or Quest

Diagnostic, and that we will not be liable for any actions or inactions performed by LabCorp or Quest Diagnostic. By using our Site and Services, you understand that the [terms and conditions](#) and [privacy policy](#) of LabCorp and/or [Quest Diagnostic](#) will apply to services performed by such laboratory, as applicable.

**You understand that the process of viewing your laboratory results is irreversible, potentially life altering and might cause distress and anxiety.** You agree that you will discuss whether it is appropriate to use our services with your medical professional in advance.

You understand that by sharing your laboratory results with healthcare providers that such information may become part of your medical record and therefore accessible by other healthcare providers and insurance providers.

The information set forth on superpower.com, is not to be construed as medical advice or a substitute for professional medical care and is not intended to diagnose, treat, or cure any mental health or medical conditions. You understand that you should discuss any dietary changes or potential dietary supplements with your provider and should not discontinue any prescription medications without first consulting your provider.

**TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, YOU AGREE THAT YOU USE OUR SERVICES AND SITE AND RELY ON THE MATERIALS, DATA, CONTENT, AND INFORMATION YOU RECEIVE IN CONNECTION WITH OUR SERVICES AND SITE AT YOUR OWN RISK, AND SUPERPOWER DISCLAIMS ALL LIABILITY AND RESPONSIBILITY ARISING OUT OF AND/OR RELATING TO OUR SERVICES AND THE SITE, INCLUDING WITHOUT LIMITATION, YOUR INTERACTIONS WITH PROFESSIONAL(S), BLOOD DRAWS, LAB RESULTS, AND OUR CONTENT.**

#### **Use of the Services by Children**

Children (under 18 years of age) are not authorized to become Members and may not use the Services.

#### **Use of the Services by Medicare Beneficiaries**

Medicare beneficiaries are not authorized to become Members and may not use the Services.

#### **Updates to the Terms**

We may modify these Terms from time to time. We will notify you of material changes by posting the amended terms on our website at least fifteen (15) days before the effective date of the changes. If we have your email on file, we may also notify you of material changes to the Terms by email at least fifteen (15) days before the effective date of the changes. Please make sure we have your current email address so that you will receive notice of any material changes. If you do not agree with the proposed changes, you agree to discontinue your use of the Site before the effective date of the changes. If you continue using the Site after the effective date, you will be bound by the updated Terms.

#### **Account Registration and Security**

You may use the Site only for your own personal, non-commercial use. If you are accepting these Terms for a Family Member as such Family Member's lawful guardian, conservator, or custodian, you agree to the terms, conditions, and notices contained or referenced herein on behalf of such Family Member. If you are registering on behalf of your Family Member, your Family Member may only use the Site for their own personal, non-commercial use. To access certain features of the Site or to become a member, you will have to create an account by entering your name, address and certain other information collected by Superpower (collectively, "**Account Information**"). It is important that you provide us with accurate and complete Account Information and update as needed. You are responsible for protecting your account username and password, and for all activities that occur under your account. You should immediately notify us of any unauthorized use of your account and if any information you provide relating to your account becomes inaccurate, incomplete or otherwise false or misleading. You should use particular caution when accessing your account from a public or shared computer so that others are not able to view or record your password or other personal information. We will not be responsible for any loss or damage if you do not protect your account or your personal information.

### **Service Use Termination**

You may terminate these Terms by ceasing to access and use the Site. We may terminate your use of the Site at any time by sending notice to you at the address or email you provided or otherwise contacting you or posting a notice on the Site. If we terminate your use of the Site because you have breached these Terms or any other agreement you have entered into with us, you will not be entitled to any refunds of services provided. We are not required to provide you with notice prior to terminating your use of the Site or a reason for such termination. In order to protect the integrity of the Site, we may, at any time in our sole discretion, block users from certain IP addresses from accessing the Site.

### **Use of the Services**

Subject to your compliance with these Terms, we grant you a limited, non-exclusive, non-transferable, non-sublicensable license to use the Site solely for your personal and non-commercial purposes. Your use of the Site must be in accordance with all applicable laws. You acknowledge that you do not acquire any ownership rights in the Site.

The following is a list of the type of actions that you may not engage in with respect to the Site or Services:

- You will not promote, encourage, or engage in defamatory, abusive, libelous, obscene, threatening, harassing, hateful or otherwise objectionable behavior.
- You will not use any robot, spider, site search/retrieval application, or other manual or automatic device or process to download, access, retrieve, index, "data mine", or in any way reproduce or circumvent, avoid, bypass, remove, or deactivate the navigational structure or technical measures or presentation of the Services or its contents;
- You will not interfere, access, tamper with or disrupt the Site or the servers or networks connected to the Services;
- You will not attempt to probe, scan or test the vulnerability of the Site or any of our systems or network or breach any security or authentication measures;

- You will not use any meta tags or other hidden text or metadata utilizing our trademarks, logos, URLs or product names without our express written consent;
- You will not use the Site or content, or any portion thereof, for any commercial purpose or for the benefit of any third party or in any manner not permitted by these Terms;
- You will not use the Site or content, or any portion thereof, if you are a past, present, or imminent competitor of us and/or using the Site or such content on their behalf.
- You will not post, distribute, or reproduce in any way any content that infringes third party intellectual property rights or violates third party rights of privacy or rights of publicity;
- You will not use, display, "frame" or "mirror" any part of the Site, our names, any of our trademarks, logos or other proprietary information, or the layout and design of any page or form contained on a page, without prior written authorization from us;
- You will not collect or store any personal information, including personally identifiable information, from users without their express permission;
- You will not provide any inaccurate, incomplete, false or misleading information, including regarding your identity or medical condition, when using the Site;
- You will not record in any way the Site and/or the Services without our express written consent;
- You will not allow any other person to use your account, username or password to access the Site, unless otherwise permitted herein; and
- You will not assist or permit any person to engage in any of the activities described in this Section.

### **Payment and Billing**

By providing a credit card or other payment method that we accept, you represent and warrant that you are authorized to use the designated payment method and that you authorize us (or our third-party payment processor, Stripe) to charge your payment method for the total amount of your purchase (including any applicable taxes and other charges) (each, a “**Transaction**”). If the payment method cannot be verified, is invalid or is otherwise not acceptable, your Transaction may be suspended or canceled. You must resolve any payment method problems before we proceed with your Transaction. If you want to change or update your payment method information, you can do so at any time by logging into your account.

You acknowledge that the amount billed may vary due to promotional offers, preferences you select, or changes in applicable taxes or other charges, and you authorize us (or our third party-payment processor) to charge your payment method for the corresponding amount.

### **Subscription Policy**

When you register for a subscription (“**Subscription**”), you expressly acknowledge and agree that (a) your Subscription automatically renews and Superpower (or our third-party payment processor) is authorized to charge you on an annual basis for your Subscription (in addition to any applicable taxes and other charges) for as long as your Subscription continues, and (b) your Subscription continues to automatically renew until you cancel it or we suspend or stop providing access to the Site in accordance with these Terms. Your Subscription type, current price, payment method, and next billing date will be confirmed in an acknowledgement email after you register. You will also receive a payment receipt each time your card on file is charged. When you register for an annual Subscription, you understand and agree that you are obligated to

an initial one-year, non-cancellable period (“**Non-Cancellable Period**”). Effective after the Non-Cancellable Period, you may opt-out of any renewal annual Subscription at any time by contacting [superpower@superpower.com](mailto:superpower@superpower.com) and requesting a cancellation of your renewal of your Subscription. We reserve the right to change Subscription prices or this Subscription Policy at any time in our sole discretion. If prices or material terms of this Subscription Auto Renewal Policy are changed, you will be notified by email prior to the change, and the change will not apply to any Subscriptions within the one-year minimum period. If Professional(s) determine the Site and Services are not clinically appropriate for you, Superpower will refund you the entire amount of the Subscription.

### **Fee Transparency**

Superpower provides administrative, technology, and billing coordination and support for Professional(s), GetLabs, and LabCorp and/or Quest Diagnostics to provide convenient and streamlined access to Labs. Superpower does not receive any compensation for services provided by Professionals, GetLabs or LabCorp and/or Quest Diagnostics. You understand that Superpower is collecting your Subscription fee at payment and providing the full amounts attributable to each of the services provided by Professional(s), GetLabs, and LabCorp and/or Quest Diagnostics as shown on your invoice directly to such entities as a paymaster. You understand that Superpower does not retain any portion of the Subscription fee for clinical services and will only retain the portion attributable to Superpower’s SaaS platform and non-clinical services. By using the Site and Services, you agree that you understand and authorize payment of these fees.

### **Consent to Electronic Communications**

You agree that we may send the following to you by email or by posting them on the Site: legal disclosures; these Terms; [Privacy Policy](#); future changes to any of the foregoing; and other notices, policies, communications or disclosures and information related to the Services. You agree that we may contact you via email, phone, text, or mail regarding prospective Services. Text messages and emails are not always secure because they travel over networks that we do not own or control. You consent to receive such communications electronically. You agree to update your contact information to ensure accuracy. Your consent to conduct actions electronically covers all interactions between you and Superpower Health.

You may opt out of certain types of electronic communications through your account or by following the unsubscribe instructions in any communication you receive from Superpower Health. Your withdrawal of consent will be effective within a reasonable time after we receive notice of your withdrawal.

We will need to send you certain communications electronically regarding the Services. You will not be able to opt out of those communications – e.g., communications regarding updates to the Terms or information about billing. Your withdrawal of consent will not affect the legal validity or enforceability of the Terms provided to and accepted by you. If you withdraw your consent to receive communications electronically, certain Services may become unavailable to you.

### **Intellectual Property Rights**

Superpower and our licensors retain all ownership rights, title and interest (including all intellectual property rights) worldwide to the Site and the Services, including to all software and content. No rights are granted to you other than as expressly set forth in these Terms. All trademarks, service marks and trade names are owned by Superpower or other respective owners.

### **DMCA Notice**

The Digital Millennium Copyright Act of 1998 (the “**DMCA**”) provides recourse for copyright owners who believe that material appearing on the Internet infringes their rights under U.S. copyright law. If you believe in good faith that materials appearing on the Site infringe your copyright, you (or your agent) may send us a notice requesting that the material be removed, or access to it blocked. In addition, if you believe in good faith that a notice of copyright infringement has been wrongly filed against you, the DMCA permits you to send us a counter-notice. Notices and counter-notices must meet statutory requirements imposed by the DMCA. One place to find more information is the U.S. Copyright Office Website, currently located at <https://www.copyright.gov>. In accordance with the DMCA, Superpower has designated an agent to receive notification of alleged copyright infringement in accordance with the DMCA. Any written Notification of Claimed infringement should comply with Title 17, United States Code, Section 512(c)(3)(A) and should be provided in writing to [compliance@superpower.com](mailto:compliance@superpower.com).

### **Links to Third Party Websites**

The Site may contain links to other sites that are owned and operated by third parties. We are not responsible for the privacy and security practices or the content, advertising, products, services or other materials made available on or through any such linked sites. We provide these links to you only as a convenience, and the inclusion of any link does not imply endorsement of any kind by us.

### **No Endorsements**

Reference to any product, recording, event, process, publication, service, or offering of any third party by name, trade name, trademark, service mark, company name or otherwise does not constitute or imply the endorsement or recommendation of such by Superpower.

### **Geographic Restrictions**

Superpower makes no representation that all products, services and/or material described on the Site, or the Services available through the Site, are appropriate or available for use in locations outside the United States or all states and territories within the United States.

### **No Warranty**

ACCESS TO THE SITE AND THE INFORMATION CONTAINED THEREIN IS PROVIDED “AS IS” AND “AS AVAILABLE” WITHOUT ANY WARRANTY OF ANY KIND, EXPRESS OR IMPLIED. SUPERPOWER DOES NOT WARRANT THE ACCURACY, COMPLETENESS OR TIMELINESS OF THE MATERIALS ON THIS SITE AND TO THE FULLEST EXTENT PERMISSIBLE PURSUANT TO APPLICABLE LAW, SUPERPOWER DISCLAIMS ALL WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF TITLE,

MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, WITH RESPECT TO ANY INFORMATION OBTAINED THROUGH THE SITE. WITHOUT LIMITING THE FOREGOING, SUPERPOWER DOES NOT WARRANT THAT ACCESS TO THE SITE WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT DEFECTS, IF ANY, WILL BE CORRECTED; NOR DOES SUPERPOWER MAKE ANY REPRESENTATIONS ABOUT THE ACCURACY, RELIABILITY, CURRENCY, QUALITY, COMPLETENESS, USEFULNESS, PERFORMANCE, SECURITY, LEGALITY OR SUITABILITY OF THE SITE OR ANY OF THE INFORMATION CONTAINED THEREIN. YOU EXPRESSLY AGREE THAT YOUR USE OF THE SITE AND YOUR RELIANCE UPON ANY OF ITS CONTENTS IS AT YOUR SOLE RISK.

### **Limitation of Liability**

IN NO EVENT SHALL SUPERPOWER BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES, OR ANY DAMAGES WHATSOEVER RESULTING FROM ANY LOSS OF USE, LOSS OF PROFITS, LITIGATION, OR ANY OTHER PECUNIARY LOSS, WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY, OR OTHERWISE, ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE SITE OR THE PROVISION OF OR FAILURE TO MAKE AVAILABLE ANY PRODUCTS, GOODS, OR SERVICES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SUPERPOWER'S TOTAL LIABILITY ARISING OUT OF OR RELATING TO THESE TERMS IS LIMITED TO THE GREATER OF (1) \$200 OR (2) THE FEES PAID TO USE THE RELEVANT SERVICES IN THE 12 MONTHS BEFORE THE DISPUTE.

### **Indemnity**

To the extent allowed by applicable law, you will indemnify Superpower and its directors, officers, employees, and contractors for any third-party legal proceedings (including actions by government authorities) arising out of or relating to your unlawful use of the Services or violation of these Terms. This indemnity covers any liability or expense arising from claims, losses, damages, judgments, fines, litigation costs, and legal fees.

### **Dispute Resolution**

**Any dispute, claim or controversy (that is not resolved informally as set forth below) between you and Superpower and their agents, employees, officers, directors, principals, successors, assigns, subsidiaries, affiliates (collectively for purposes of this section, "Superpower Parties") arising from or relating in any way to: (1) these Terms and their interpretation or the breach, termination or validity thereof, and the relationships which result from these Terms; (2) your use of any Site owned or operated by Superpower Parties; or (3) any products or services sold or distributed by Superpower Parties or through any website owned or operated by Superpower Parties (collectively, "Covered Disputes") will be resolved by binding arbitration, rather than in court. Covered Disputes shall be interpreted broadly.**

### **Mandatory Informal Dispute Resolution**



Superpower Parties seek to resolve disputes informally where possible. Before formally pursuing a Covered Dispute in arbitration, you agree to first send a detailed notice (“**Notice**”) to Superpower Parties by email at [compliance@superpower.com](mailto:compliance@superpower.com). Your Notice must contain all of the following information: (1) your full name; (2) your address, telephone number, and email address; and (3) a detailed description of your dispute, the nature and basis of your claim(s), and the nature and basis of the relief you are seeking. You must personally sign this Notice. You and Superpower Parties agree to negotiate in good faith about the dispute in an effort to swiftly resolve it to your satisfaction without the need for a formal proceeding. Should Superpower Parties request a telephone conference with you in an effort to resolve your dispute as part of this informal process, you agree to personally participate (with your counsel if you are represented). This process should result in resolution of the dispute, but if for some reason it is not resolved within 60 days after receipt of a fully completed Notice and the parties have not agreed to extend this time period, you may initiate an arbitration. Compliance with and completion of this mandatory informal dispute resolution process is a condition precedent to filing any demand for arbitration. The statute of limitations and any filing fee deadlines shall be tolled while the parties engage in this process. Unless prohibited by applicable law, the arbitration administrator shall not accept or administer any demand for arbitration unless the claimant has certified in writing that they have fully complied with this process. This certification shall be personally signed by you or Superpower Parties. A court shall have the authority to enjoin the filing or prosecution of arbitrations without first providing a fully completed Notice and participating in good faith in this informal dispute resolution process.

### **Initiating Arbitration and Arbitration Rules**

Any arbitration between you and Superpower Parties shall be administered by National Arbitration and Mediation (“**NAM**”) in accordance with NAM’s operative Comprehensive Dispute Resolution Rules and Procedures (the “**NAM Rules**”) in effect at the time any demand for arbitration is filed with NAM, as modified by this Legal Disputes Section. For a copy of the NAM Rules, please visit <https://www.namadr.com/resources/rules-fees-forms> or contact NAM at NAM’s National Processing Center at 990 Stewart Avenue, 1st Floor, Garden City, NY 11530 and email address [commercial@namadr.com](mailto:commercial@namadr.com). If NAM is unavailable or unwilling to administer the proceeding under the Legal Disputes Section as written, the parties agree that the arbitration shall be administered by the American Arbitration Association (“**AAA**”) pursuant to the AAA Consumer Arbitration Rules and the Consumer Due Process Protocol (collectively, “**AAA Rules**”) in effect at the time any demand for arbitration is filed with AAA, as modified by this Legal Disputes Section. If the AAA is unavailable or unwilling to apply this Legal Disputes Section as written, the parties shall mutually agree on an alternative administrator that will administer the proceeding under the Legal Disputes Section as written. If the parties are unable to agree, they will petition a court of competent jurisdiction to appoint an arbitration administrator that will do so. Any arbitration will be held before a single neutral arbitrator.

### **Arbitration Fees**

Payment of all filing, administration and arbitrator fees will be governed by the NAM Rules (or the AAA Rules should AAA be the designated administrator as set forth above). Upon a showing of financial hardship, Superpower Parties will consider your request to promptly reimburse your portion of the arbitration fees provided for in the NAM (or AAA) Rules.

### **Arbitration Authority**

**The arbitrator has the sole authority to and shall address all claims or arguments by both parties concerning the formation, legality, and enforceability of this arbitration clause, the scope of this clause, and the arbitrability of any claim or issue arising between us.**

There is no judge or jury in arbitration, and court review of an arbitration award is limited. However, an arbitrator can award on an individual basis the same damages and relief as a court (including injunctive and declaratory relief or statutory damages) only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that party's individual claim. The arbitrator may not award relief for or against anyone who is not a party to the proceeding. The arbitrator is bound by and must follow the terms of these Terms as a court would. Regardless of the manner in which the arbitration is conducted, the arbitrator shall issue a reasoned written decision sufficient to address the essential findings and conclusions of law on which the award is based. The arbitration award shall be binding only between you and Superpower Parties (as defined above) and shall have no preclusive effect in any other arbitration or proceeding involving a different party, provided that the arbitrator may consider rulings in other arbitrations involving different individuals. The arbitrator may award fees and costs as provided by the NAM Rules (or the AAA Rules if AAA is the designated administrator as set forth above) or to the extent such fees and costs could be awarded in court or if the arbitrator determines that a claim, proceeding, or defense was frivolous or brought for harassment, for an improper purpose, or in bad faith. The arbitrator shall apply the provisions of Federal Rule of Civil Procedure 68 after entry of the award.

### **Sole Exceptions to Arbitration**

Notwithstanding the foregoing, in lieu of arbitration: (1) either you or Superpower Parties may elect to have an individual claim heard in small claims court consistent with any applicable jurisdictional and monetary limits that may apply, provided that it is brought and maintained as an individual claim and is not appealed or removed to any court of general jurisdiction; and (2) you agree that you or Superpower Parties may bring suit in court to enjoin infringement or other misuse of intellectual property rights.

### **Jury Trial and Class Action Waiver**

**Except as the Terms of Use otherwise provide and to the fullest extent permitted by law, you, Superpower Parties acknowledge and agree that you are each waiving the right to a trial by jury and to the litigation of disputes in state or federal courts of general jurisdiction. The parties further agree that any arbitration shall be conducted in their individual capacities only and not as a class action/class arbitration or other representative action, and the parties expressly waive their right to file a class action or seek relief on a class basis. You and Superpower Parties may not be plaintiffs or class members in any purported class, collective, private attorney general, or representative proceeding, or otherwise make or proceed with any claim on a collective or consolidated basis, and may each bring claims against the other only in your or its individual capacity. As referenced above, the arbitrator may award declaratory or injunctive relief only on an individual basis and only to the extent necessary to provide relief warranted by the individual claim. If a court determines that this class action waiver is not enforceable as to a particular claim or request for relief and all appeals from that decision have been exhausted (or the decision is**

**otherwise final), then the parties agree that that particular claim or request for relief shall proceed in court but shall be stayed pending arbitration of the remaining claims.**

### **Governing Law**

You and Superpower Parties agree that any claim between us involves commerce under, and is governed exclusively by, the Federal Arbitration Act (“FAA”) and federal law, and not by any state or local laws, or the laws of other countries, concerning or purporting to place limits on the availability or scope of arbitration or in any way imposing requirements beyond or inconsistent with those set forth in the FAA. Where otherwise applicable, the laws of the state of Delaware apply. Should any action proceed in court (other than in small claims court), you consent to the exclusive jurisdiction of the federal and state courts of the state of Delaware.

### **General Provisions**

These Terms make up the entire agreement relating to your use of the Services and supersede all prior agreements relating to the subject matter hereof. We may change, suspend, or discontinue any of the Services at any time. We will not be liable to you or to any third party for any modification, suspension or discontinuance of the Site. These Terms do not confer any third-party beneficiary rights. You may not transfer any of your rights or obligations under these Terms to anyone else without our consent. Superpower may assign our rights in connection with a merger, acquisition, or sale of assets, or by operation of law or otherwise. No delay or omission by Superpower to exercise any right or power it has under these Terms shall impair any such right or power or be construed as a waiver of any succeeding breach. Any waivers by Superhero must be in writing and signed by an authorized representative of Superhero.

This electronic document, and all other electronic documents referred to or incorporated herein, will be: (a) deemed for all purposes to be a “writing” or “in writing”, and to comply with all statutory, contractual, and other legal requirements for a writing; and (b) legally enforceable as a signed agreement. A printed version of these Terms and any notice given in electronic form shall be admissible in judicial proceedings or administrative proceedings based upon or relating to these Terms to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form.

We appreciate your feedback, suggestions, and other communications (collectively, “**Feedback**”) about the Site and the Services. You should know that we can, but are not obligated to, use your Feedback without restriction or any obligation to compensate you, and aside from the laws governing the confidentiality of healthcare information, we have no obligation to keep them confidential

Even after termination, these Terms will remain in effect such that all terms that by their nature may survive termination will be deemed to survive such termination.

You represent that no promise, inducement, or agreement not expressed herein has been made to me to sign this agreement.

If you have any questions about these Terms, please contact us via email at [compliance@superpower.com](mailto:compliance@superpower.com).