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4424 Technology Drive Fremont, CA 94538 (510) 824-0252 voice (510) 824-0254 fax

## **EVALUWRITER SERVICE AGREEMENT**

This Agreement between you and Computer Methods sets forth our mutual understandings and agreements relating to the provision of Computer Methods products and services to you. If you have any questions or need to contact us regarding our service, please contact Computer Methods and the numbers shown above.

1. **Product Description.** Computer Methods will maintain and periodically update an Internet-based web site designed to assist disability examiners in the preparation of functional capacity evaluations based on the NADEP model. The web site consists of a group of forms that solicit information pertaining to functional capacity examinations. When directed by the examiner, the Computer Methods server will assemble a word processor-compatible report and download the file to the examiner's local hard drive. Use of the web site is unlimited for subscribers with active accounts. Access to the web site will be provided 24 hours a day 7 days a week (notwithstanding the provisions of paragraph 2).
2. **Server Maintenance.** Computer Methods reserves the right to temporarily interrupt service for periodic web site maintenance. You will be notified in advance of extended maintenance windows or maintenance windows that occur during normal business hours. Server maintenance may include the following:
  - Updates to report components per NADEP specifications
  - Removal of expired accounts and their associated forms
  - Purging of data files that exceed the server's storage capacity
3. **Customer Support.** You will have direct access to the Computer Methods web support center during hours of normal business operation, Monday through Friday from 9:00 am to 5:00 pm (Pacific time zone). You agree to access the web site using a computer system that supports:
  - HTTP (Hyper Text Transfer Protocol)
  - Microsoft Internet Explorer Version 4.0 (or compatible browser)
  - Microsoft Word (or compatible word processor)
4. **Term; Early Termination.** This Agreement lasts for the initial term you have selected. If you complete that term, you will then become a month-to-month customer under this Agreement unless you agree to a new initial term. When you are a month-to-month customer, you can end this Agreement at any time by giving us a minimum of 30 days notice, and we can do the same. Notwithstanding the termination of this Agreement, the provisions set forth in Paragraphs 6, 7, 8 and 10 of this Agreement will continue to govern our and your conduct after the end of this Agreement.
5. **Use of Services; Rights to Restrict, Interrupt or End Service or this Agreement.** Computer Methods is providing products and services solely for your personal or internal business use as an end user, and you will be solely responsible for the content of any forms that are submitted. You agree to use this web site in a manner that conforms with the terms of this agreement, and you agree not to (a) attempt to gain unauthorized access to any other account, or (b) interfere or disrupt other Users. You hereby warrant that you will not infringe the copyright, trademark, or other intellectual property rights of any other person or entity through the use of the web site, and that you will not use Computer Methods services to defame, cause an invasion of privacy or otherwise violate the right of any person or entity, or violate any local, state, federal, or international statute, regulation or treaty. To maintain or improve Computer Methods service, to prevent fraud or for other business reasons, we can restrict, interrupt or modify your service without notice,

but, with respect to each interruption, restriction or modification, Computer Methods will promptly seek to resolve any situation or condition that has caused an interruption in service to the extent that the fault involves Computer Methods. WE CAN RESTRICT OR END YOUR SERVICE OR THIS AGREEMENT WITHOUT NOTICE if you: (a) carry past due balances; (b) make a false statement to us; (c) interfere with our customer service or any other business operations; (d) become insolvent or go bankrupt; (e) breach any part of this Agreement. We also reserve the right to do so if we believe that our service is being misused or used by anyone for unlawful activity.

6. ***Mutual Waivers and Limitations of Liability.*** By entering into this Agreement, you and we are waiving important rights. You agree our maximum liability to you under any theory (including but not limited to fraud, misrepresentation, breach of contract, personal injury, negligence, or products liability) is limited to a refund or rebate of charges you have paid or owe to us. We agree your maximum liability to us under any theory (including but not limited to fraud, misrepresentation, breach of contract, personal injury, negligence, or products liability) is limited to charges you owe us, any actual damages you cause to our business or property, and any damages collected from us by a third party arising out of your use of our products or services. Neither of us can recover (a) punitive damages; (b) treble, consequential, indirect, or special damages (including lost profits); (c) attorney's fees. You and we agree not to make, and to waive to the fullest extent allowed by law, any claim for damages other than direct, compensatory damages as limited above. You and we also agree not to make, and to waive to the fullest extent allowed by law, any claim for equitable relief, other than to protect any patents, copyrights, trademarks, or other trade secrets or proprietary information, or to prevent abusive, fraudulent or illegal use of our products or service. You agree to indemnify us for any claims by third parties against us arising out of your use of our products or service. We aren't liable to you for interrupted service or problems caused by or contributed to (i) by you; (ii) by any third party; (iii) by network congestion, atmospheric conditions or other things we don't control; or (iv) by any act of God or natural disaster. Computer Methods shall not be liable for any claim by or against you arising out of or related to (i) alteration, theft or destruction of your computer programs, information, data files, procedures or other property, (ii) any losses or damages you may suffer in connection with your use or inability to use Computer Methods products or services, or (iii) any data, materials or other information transmitted or received by or to you or your intended recipient that are lost or improperly intercepted via the Internet.
7. ***Independent Arbitration.*** Instead of suing in court, you are agreeing to arbitrate disputes arising out of or related to this or prior Agreements. Arbitration isn't the same as court. The rules are different and there is no judge and jury. You and we are also waiving rights to participate in class actions. Please read the following carefully:

**You and we each agree that, to the fullest extent provided by law:**

- a) ANY CONTROVERSY OR CLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR TO ANY PRIOR AGREEMENT FOR SERVICE WITH US OR ANY OF OUR AFFILIATES OR PREDECESSORS IN INTEREST, OR TO ANY PRODUCT OR SERVICE PROVIDED UNDER OR IN CONNECTION WITH THIS AGREEMENT OR SUCH PRIOR AGREEMENT, WILL BE SETTLED BY INDEPENDENT ARBITRATION INVOLVING A NEUTRAL ARBITRATOR AND ADMINISTERED BY THE AMERICAN ARBITRATION ASSOCIATION ("AAA") UNDER ARTIBRATION RULES APPLICABLE TO OUR INDUSTRY.
- b) Even if applicable law permits class actions or class arbitrations, you waive any right to pursue on a class basis any such controversy or claim against us, or any of our affiliates or predecessors in interest, and we waive any right to pursue on a class basis any such controversy or claim against you. If multiple claims are joined in one action, some of which would not be subject to arbitration, the latter claims must be stayed until any claims in that action that are subject to arbitration have been resolved. If claims are asserted against multiple parties, some of whom aren't required to arbitrate, the claims subject to arbitration must be severed;

- c) No arbitrator has authority to award relief in excess of that this Agreement provides, or to order consolidation or class arbitration, except that an arbitrator deciding a claim arising out of or relating to a prior agreement may grant as much substantive relief on a non-class basis as such prior agreement would permit. NO MATTER WHAT ELSE THE AGREEMENT SAYS, IT DOESN'T AFFECT THE SUBSTANCE OR AMOUNT OF ANY CLAIM YOU MAY ALREADY HAVE AGAINST US OR ANY OF OUR AFFILIATES OR PREDECESSORS IN INTEREST PRIOR TO THIS AGREEMENT. THIS AGREEMENT JUST REQUIRES YOU TO ARBITRATE SUCH CLAIMS ON AN INDIVIDUAL BASIS. In all arbitrations, the arbitrator must give effect to applicable statutes of limitations and will decide whether an issue is arbitrable or not. In a Large/Complex Case arbitration, the arbitrators must also apply the Federal Rules of Evidence and the losing party may have the award reviewed by a review panel of 3 arbitrators;
  - d) If for some reason these arbitration requirements don't apply, you and we each waive, to the fullest extent allowed by law, any trial by jury. A judge will hear and decide any dispute instead; and
  - e) No matter what else the Agreement says, it doesn't apply to or affect the rights in a certified class action of a member or a certified class who first receives this Agreement after his class has been certified, or the rights in an action of a named plaintiff who first receives this Agreement while his actions are pending, although it does apply to other actions, controversies, or claims involving such persons.
8. ***Our Rights to Make Changes.*** All products and services we provide are subject to our business policies, practices, and procedures, which we can change at any time and from time to time in our sole discretion without notice to you. WE CAN ALSO CHANGE THE TERMS UPON WHICH WE PROVIDE PRODUCTS AND SERVICES AND THE TERMS OF THIS AGREEMENT AT ANY TIME AFTER THE EXPIRATION OF THE INITIAL TERM BY GIVING YOU WRITTEN NOTICE PRIOR TO THE TIME THE CHANGES WOULD GO INTO EFFECT. **If (a) you are using our services after the initial term or you are a month to month customer and (b) you chose to continue to use our products or services after receiving notice of any changes, those changes will apply to you after the date you receive the notice and you become or continue as a month to month customer, and will be reflected in the next billing period.**
9. ***Information About You.*** We will not share information we obtain from you with unrelated third parties (except credit agencies or as required by law).
10. ***About this Agreement.*** If either of us waives any part of this Agreement in one instance, that won't be a waiver of any other provision or any other instance. We may assign all or part of this Agreement without notice, and you agree to comply with the terms of any such assignment as instructed by us. (Assignment will release us from all liability for the rights and duties involved.) You can't assign any part of this Agreement or any of your rights or duties without our prior written consent. All written notices are considered delivered to you when mailed to the billing address we have on file for you at the time, or to us when mailed to Computer Methods at the address shown above. You represent that you have the legal capacity to agree to this Agreement. If you are ordering for a company or other entity, you are representing that you are authorized to bind that company or entity, and where the context requires, "you" in the Agreement shall mean that company or entity. If any part of this Agreement is held invalid, that won't have any effect on any other part, unless your or our rights or duties are materially impaired. You can't rely on any other document or statement by anybody, and you have no other rights with respect to our products or services or this Agreement, except as specifically provided by law or in this Agreement. This Agreement isn't for the benefit of any third party except our affiliates and predecessors and successors in interest. It is governed by the laws of the state encompassing the area code assigned to your telephone number, without regard to the conflicts of laws rules of that state. By signing this Agreement, you are representing that all the information you have provided is true and accurate and are acknowledging that we are relying on that information. A copy or a fax of this agreement and your signature is the same as an original.



**EVALUWRITER SUBSCRIPTION AGREEMENT (con't)**

**SIGNATURE PAGE**

**NAME:** \_\_\_\_\_

**COMPANY:** \_\_\_\_\_

**SIGNATURE:** \_\_\_\_\_

\_\_\_\_\_

**DATE:**