

# PRACTITIONER AGREEMENT

This Practitioner Agreement (this "Agreement") is made as of the Effective Date identified below (the "Effective Date") and is entered into between **Ashley Koff Better Nutrition Program LLC** d/b/a The Better Nutrition Program ("BNP" or the "Company") and the individual identified below, and if applicable, the practice entity identified below (together, "Practitioner"), together with its affiliates, successors, assigns, as well as each of their respective agents, servants, representatives, shareholders, members, directors, officers, and employees, (individually, a "Party" and collectively, the "Parties") and supersedes and amends any prior agreement, and any amendments thereto between the Parties related to the **Total Neuropathy Solution Better Nutrition Program** ("TNS Program").

## RECITALS

WHEREAS, Company and Practitioner have entered into, or are entering into, or may subsequently enter into, agreements or other documented arrangements, including the TNS Program Sales Terms (collectively, the "Business Arrangements"), pursuant to which Practitioner may provide services in conjunction with Company that require the Parties to access, create and use health information that is protected by state and/or federal law;

WHEREAS, Company agrees to give Practitioner's patients access to the TNS Program upon Practitioner's purchase of the program;

WHEREAS, the Parties will create or receive from or on behalf of each other, or have access to, Protected Health Information ("PHI") in the course of providing services ("Services"); and

WHEREAS, pursuant to the Health Insurance Portability and Accountability Act of 1996 and its implementing administrative simplification regulations (45 CFR §§ 160-164) ("HIPAA") as either have been amended by Subtitle D of the Health Information Technology for Economic and Clinical Health Act and its implementing regulations, as Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (the "HITECH Act"), the Parties are required to enter into this Agreement.

NOW THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, the Parties, intending to be legally bound, agree as follows:

### I. DEFINITIONS

Terms used but not otherwise defined in this Agreement shall have the same meaning as those terms defined in HIPAA, as amended.

### II. EFFECT OF AGREEMENT

The Parties agree that any ambiguity in this Agreement shall be resolved in favor of a meaning that permits the Parties to comply with HIPAA.

### III. PHI OBLIGATIONS

Permitted Uses and Disclosures: Except as otherwise limited in this Agreement, the Parties may use or disclose PHI to (1) perform functions, activities, or services for, or on behalf of, one another related to the TNS Program, provided that such use or disclosure would not violate HIPAA if made by the Parties or (2) as required or permitted by applicable law, rule, regulation, or regulatory agency or by any accrediting or credentialing organization to whom a Party is required to disclose such PHI. In addition, the Parties may: (1) use PHI, if necessary, for the proper management and administration of the Parties or to carry out the legal responsibilities of the Parties; (2) disclose PHI, if necessary, if the following requirements are met: (a) the disclosure is Required by Law; or (b) the Party obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidentially and used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the person notifies the Party of any instances of which it is aware in which the confidentiality of the PHI has been breached; and (3) Company may use PHI to provide Data Aggregation services to OvationLab as permitted by HIPAA.

Restrictions: The Parties shall not use or disclose PHI for any other purpose not described herein.

The Parties' Agents: The Parties shall ensure that their agents, including subcontractors, to whom they provide PHI agree to the same restrictions and conditions that apply to the Parties pursuant to this Agreement with respect to PHI and Electronic PHI.

Appropriate Safeguards: Security: The Parties shall implement appropriate and commercially reasonable safeguards to prevent use or disclosure of PHI other than as permitted in this Agreement. Effective as of the date the Parties are required to comply with 45 C.F.R. Part 164 Subpart C, the Parties shall implement Administrative, Physical and Technical Safeguards that reasonably and appropriately protect the Integrity, Availability, and Confidentiality of Electronic PHI. The Parties shall report to one another in writing within twenty-four (24) hours of any Security Incident of which it becomes aware.

Government Access to Records: The Parties shall make their internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by one another available to the Secretary of the Department of Health and Human Services for purposes of determining the Parties' compliance with HIPAA. The Parties shall provide one another with a copy of any PHI that a Party provides to the Secretary concurrently with providing such PHI to the Secretary.

HITECH Act: The Parties hereby agree that the provisions of HIPAA and the HITECH Act that apply to the Parties and that are required to be incorporated by reference in an agreement are incorporated into this Agreement as if set forth in this Agreement in their entirety and are effective as of the applicable effective date of each such provision. The Parties hereby further agrees to comply with all requirements of HIPAA, the HITECH

Act and each of their implementing regulations that are applicable to business associates commencing as of the applicable effective date of each such provision.

Reporting of Improper Use or Disclosure: A Party shall report to the other Party in writing within twenty-four (24) hours of any actual or suspected violations of this Agreement or any actual or suspected Breach of Unsecured PHI. An actual or suspected Breach shall be treated as discovered by the Party as of the first day on which such Breach is known to the Party, its employees, officers or other agents, or, by exercising reasonable diligence, should have been known to the Party, its employees, officers or other agents. The Party's notification to the other Party, to the extent possible, shall include the identity of each Individual whose Unsecured PHI has been, or is reasonably believed to have been, breached and be in compliance with the HIPAA Breach Notification Rules, and any other relevant state and/or federal rules. The Parties further agree to fully cooperate in good faith with and to assist one another in complying with the requirements of HIPAA and the HITECH Act, including without limitation, the provision of written notices to affected Individuals following the discovery of a Breach of Unsecured PHI if requested by a Party.

Mitigation: The Parties shall mitigate, to the extent practicable, any harmful effect that is known to a Party of a use or disclosure of PHI or Unsecured PHI by a Party in violation of the requirements of this Agreement, HIPAA or the HITECH Act.

Availability of PHI: To the extent that a Party is required to maintain PHI that is part of a Designated Record Set, the Party shall within ten (10) days after a written request from the other Party: (1) provide access, at the request of the other Party, and in the time and manner designated by the Party, to such PHI to the Party or, as directed by the Party, to an Individual in order to meet the requirements under 45 CFR § 164.524; and (2) make amendments to such PHI as directed or agreed to by the Party in accordance with the requirements of 45 CFR § 164.526.

Band information related to such disclosures and, within ten (10) days after the Party's written request, shall provide to the Party or to an Individual, in time and manner designated by the Party, information collected in accordance with this Section, as would be required for the Party to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528.

Notice: The Parties shall provide each other with the notice of privacy practices that a Party produces in accordance with 45 CFR § 164.520, as well as any subsequent changes to the notice of privacy practices.

Changes in Access by Individual: The Parties shall provide each other with any changes in, or revocation of, permission by an Individual to use or to disclose PHI, if such changes affect the other Party's permitted or required uses and disclosures.

Restrictions on Use and Disclosure of PHI: The Parties shall notify one another of any restriction to the use or disclosure of PHI that a Party has agreed to in accordance with 45 CFR § 164.522.

HIPPA Release and Informed Consent: Practitioner shall obtain informed consent from its patients related to the use of aggregate PHI data, release of PHI between the Parties and with

the assigned coach, all privacy notifications and authorization related to electronic communication.

#### IV. SCOPE

Practitioner agrees to provide BNP any patient information and recommendations as requested that could contribute to the success of their patient enrolled in TNS. Coaches do not make recommendations nor provide medical advice and/or treatment so Practitioner understands that their patient will be referred back to them by BNP to address any medical or personalized nutrition needs that arise. Practitioner understands that all communications regarding patients, TNS programs, payments etc. will be directly with BNP. Practitioner will not attempt or respond to any communications from a current or prior BNP coach unless the communication is initiated by BNP.

#### V. CONFIDENTIALITY

During the Business Arrangements, Practitioner may have access to and become acquainted with various trade secrets, copyright materials, inventions, innovations, processes, information, records and specifications owned or licensed by Company and/or used by Company in connection with the operation of its business including, without limitation, files, records, documents, BNP's Licensed Assets (including, but not limited to trademarks, copyrights and all intellectual property), artwork/creative, training materials, curriculum, instruction manuals, the Total Neuropathy Solution ("TNS") program materials, and TNS BNP ("Total Neuropathy Solution Better Nutrition Program") materials including any and all BNP materials and resources (collectively, "BNP Materials"). Practitioner agrees that it will not disclose any of the aforesaid, directly or indirectly, or use any of them in any manner, either during the term of this Agreement or at any time thereafter, except as required in the course of this engagement with Company, such as approved marketing use, including sharing images of the TNS App (the images in the App store) or any other marketing materials provided by BNP, OvationLab, or Breakthrough Marketing. All BNP Materials shall remain the exclusive property of Company. Practitioner shall not retain any copies of the foregoing without Company's prior written permission.

#### VI. NON-SOLICITATION; NONINTERFERENCE AND NON-COMPETE

During this Agreement and for a period of five (5) years following any termination of this Agreement, Practitioner shall not, directly or indirectly hire, solicit, or encourage to leave the Company's employment or engagement, any current or prospective Coach involved with any component of the TNS Program or hire any such current or prospective Coach who has left the Company's employment or contractual engagement within five (5) years of such current or prospective employment or engagement.

During the duration of Practitioner's business relationship with Company and for a period of three (3) years following termination of this Agreement, Practitioner will not engage in any other business or professional activity involving a neuropathy nutrition program. Practitioner agrees that it will not use any of BNP's Licensed Assets or any of the Company's other assets at any time and/or for any purpose.

## VII. INDEMNIFICATION

Practitioner agrees to indemnify, defend, and hold Company, its employees, owners, officers, board members, agents, coaches, and subcontractors harmless from any and all liabilities, claims, demands, damages, and all costs and expenses, arising out of the performance of the services performed pursuant to this Agreement that are caused, in whole or in part, by Practitioner's negligent or wrongful act or omission or that of anyone employed by Practitioner for whose acts Practitioner may be liable, or that result from the use or misuse of the services performed pursuant to this Agreement.

Subject to the limitations and exclusions set forth in Paragraph IX of this Agreement, Company agrees to indemnify and hold Practitioner harmless from any and all liability, claims, demands, damages, and all costs and expenses in connection therewith, for or arising out of the performance of Company's services performed pursuant to this Agreement that are caused, in whole or in part, by Company's willful misconduct or that of anyone employed by Company for whose acts Company may be liable.

## VIII. TERMINATION

Term: The Term of this Agreement shall be effective as of the date set forth above and shall terminate when Practitioner and its patients cease to utilize the TNS Program; provided, however, that certain obligations shall survive termination of this Agreement as set forth in Section XI.

Termination for Cause: Company may immediately terminate this Agreement in the event that Practitioner breaches any provision of this Agreement. In its sole discretion, Company may permit Practitioner the ability to cure or to take substantial steps to cure such material breach to Company's satisfaction within thirty (30) days after receipt of written notice from Company. Company may additionally report any Breaches to the Secretary when required.

Return or Destruction of PHI: Upon termination, the Parties shall continue to extend the protections of this Agreement to such PHI, and limit further use of such PHI to those purposes.

Termination of Business Arrangement: Upon termination of all Business Arrangements, either party may terminate this Agreement by providing written notice to the other party. Company may terminate this Agreement at any time, upon written notice to Practitioner.

## IX. LIMITATION ON ACTION

ANY ACTION AGAINST COMPANY ARISING OUT OF, RESULTING FROM, OR RELATED TO THE PERFORMANCE OR BREACH OF THIS AGREEMENT SHALL BE FILED NOT LATER THAN ONE YEAR AFTER THE CAUSE OF ACTION HAS ACCRUED, PROVIDED PRACTITIONER HAS COMPLIED WITH ALL AGREEMENT REQUIREMENTS FOR NOTICE.

PARTIES HEREBY WAIVE TO THE FULLEST EXTENT PERMITTED BY LAW ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, ARISING OUT OF, OR IN ANY WAY RELATING TO THIS AGREEMENT.

## X. COMPLIANCE WITH LAW

The Parties shall comply with all laws, regulations, and requirements applicable to the Business Arrangements, including, without limitation, international, federal, state, and local laws, and the laws applicable to any location where any Business Arrangements are to be performed, including maintaining all required licenses and certifications. Such compliance shall include, without limitation, the Health Insurance Portability and Accountability Act of 1996 and its implementing administrative simplification regulations (45 CFR §§ 160-164) ("HIPAA") as either have been amended by Subtitle D of the Health Information Technology for Economic and Clinical Health Act and its implementing regulations, as Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (the "HITECH Act"), environmental, human rights, labor, employment, non-discrimination and anti-corruption laws (including the Foreign Corrupt Practices Act).

## XI. MISCELLANEOUS

Amendment to Comply with Law: The Parties acknowledge that it may be necessary to amend this Agreement to comply with modifications to HIPAA, including but not limited to statutory or regulatory modifications or interpretations by a regulatory agency or court of competent jurisdiction. No later than sixty (60) days after the effective date of any such modifications, the Parties agree to use good faith efforts to develop and execute any amendments to this Agreement as may be required for compliance with HIPAA.

Insurance: Practitioner will carry general liability insurance (including professional liability insurance) relative to any service that it performs in conjunction with this Agreement with limits of not less than \$1,000,000 per occurrence. Practitioner shall provide a certificate of coverage upon request of Company.

Merger. This Agreement shall not be terminated by the merger or consolidation of Company into or with any other entity.

Amendment: This Agreement may be amended or modified only in writing signed by the Parties.

No Third Party Beneficiaries: Nothing expressed or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than Company, Practitioner and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

Successors and Assigns. All of the provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, if any, successors, and assigns.

Governing Law: This Agreement shall be governed by and construed in accordance with HIPAA and its implementing administrative simplification regulations, the HITECH Act and its regulations, and the laws of the State of Ohio without regard to conflicts of law principles. The Parties agree that the jurisdiction and venue of any action with respect to this Agreement shall be in a court of competent subject matter jurisdiction located in the United States District Court of the Southern District of Ohio, or the Court of Common Pleas, Franklin County, Ohio. The Parties hereby consent to personal jurisdiction and proper venue in the

courts in the United States District Court of the Southern District of Ohio, or the Court of Common Pleas, Franklin County, Ohio.

Waiver. Waiver by one party hereto of breach of any provision of this Agreement by the other shall not operate or be construed as a continuing waiver.

Paragraph Headings: The paragraph headings in this Agreement are for convenience only. They form no part of this Agreement and shall not affect its interpretations.

Unenforceability of Provisions. If any provision of this Agreement, or any portion thereof, is held to be invalid and unenforceable, then the remainder of this Agreement shall nevertheless remain in full force and effect. IF AND TO THE EXTENT ANY WAIVER, EXCLUSION, LIMITATION, INDEMNITY, OR OTHER PROVISION IN ANY EXHIBIT, ADDENDUM, THIS AGREEMENT OR ANY OTHER CONTRACT DOCUMENTS FAILS TO COMPLY WITH THE LAW OF THE STATE UNDER WHICH IT IS CONSTRUED DUE TO THE ABSENCE OF CAPITALIZATION OR OTHER GRAPHIC EMPHASIS, EACH PARTY WAIVES OBJECTION TO THE PROVISION ON THAT BASIS TO THE EXTENT PERMITTED BY LAW AND OTHERWISE AGREES TO BE ESTOPPED FROM RAISING SUCH OBJECTION IN ANY JUDICIAL PROCEEDING. IN DOING SO, EACH PARTY ACKNOWLEDGES THAT IT IS A SOPHISTICATED COMMERCIAL PARTY REPRESENTED BY COUNSEL IN CONNECTION WITH THE NEGOTIATION AND EXECUTION OF THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO THIS PARAGRAPH.

Attorneys' Fees. The prevailing Party shall have the right to collect from the other Party its reasonable costs and attorneys' fees incurred in enforcing this Agreement.

Notices. Any and all notices, demands, or other communications required or desired to be given hereunder by any Party shall be in writing and shall be validly given or made to another Party if personally served, or if deposited in the United States mail, certified or registered, postage prepaid, return

receipt requested or via email with read receipt. If such notice or demand is served personally, notice shall be deemed constructively made at the time of such personal service. If such notice, demand, or other communication is given by mail, such notice shall be conclusively deemed given five days after deposit thereof in the United States mail addressed to the party to whom such notice, demand or other communication is to be given at the addresses identified below. Any party hereto may change its address for purposes of this paragraph by written notice in the manner provided herein.

Entire Agreement: This Agreement, the TNS Sales Terms, and all exhibits hereto, constitutes the entire agreement between the Parties with respect to the matters contemplated herein and supersedes all previous and contemporaneous oral and written negotiations, commitments, and understandings relating thereto. Each party to this agreement acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which is not embodied herein, and that no other agreement, statement, or promise not contained in this Agreement shall be valid or binding.

Survival. In the event of any termination of this Agreement, Paragraphs V-VII and IX shall survive and continue in effect. Any term or condition of this Agreement, which by its nature is intended to survive termination of this Agreement, shall survive such termination.

Cumulative Remedies. The various rights and remedies of Company under this Agreement or otherwise shall be construed to be cumulative, and none of them shall be exclusive of any other or of any right or remedy allowed by law or in equity by statute. No delay or omission of Company to exercise any right, privilege, or power accruing upon any event of default shall impair any such right, privilege, or power, or shall be construed to be a waiver of any such event of default or any acquiescence therein; and every power and remedy given by this Agreement to Company may be exercised from time to time, as often as may be deemed expedient by Company.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement by their duly authorized representatives to be effective as of the Effective Date.

**PRACTITIONER**  
**Individual Name:**

**COMPANY**  
**Ashley Koff Better Nutrition Program, LLC**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
By: Ashley Koff, RD

AND

Its: Member  
Address: 808 Yard St #416  
Columbus, OH 43212

**PRACTITIONER ENTITY**  
**Entity Name:**

Effective Date: \_\_\_\_\_

\_\_\_\_\_  
By (Name):  
Title:  
Address: