



**SWORD** HEALTH



Terms of Service

# I. INTRODUCTION

SWORD Health Technologies, Inc. ("Sword Health", "Sword" "we", "us" or "our") provides content, functionality and other products and services to you when you visit swordhealth.com (the "Websites") or use the Sword Health mobile application (the "App") (collectively, the "Services"). By accessing, browsing, and/or using the Services, you acknowledge that you have read and agree to be bound by these Terms of Service ("Terms") and our **Privacy Notice**, which is incorporated herein by reference. THESE TERMS AND OUR PRIVACY NOTICE CONSTITUTE A BINDING AGREEMENT BETWEEN YOU AND SWORD.

**PLEASE READ** THESE TERMS OF SERVICE CAREFULLY, AS THEY CONTAIN TERMS AND CONDITIONS THAT IMPACT YOUR RIGHTS, OBLIGATIONS AND REMEDIES IN CONNECTION WITH YOUR USE OF THE SERVICES AND CONTENT. FOR EXAMPLE, THE TERMS INCLUDE:

- YOUR OBLIGATION TO COMPLY WITH ALL APPLICABLE LAWS AND REGULATIONS;
- LIMITATIONS OF OUR LIABILITY TO YOU; AND
- A REQUIREMENT THAT YOU PURSUE CLAIMS OR SEEK RELIEF AGAINST US (INCLUDING MONETARY, INJUNCTIVE, AND DECLARATORY RELIEF) ON AN INDIVIDUAL BASIS, RATHER THAN AS A PARTICIPANT IN ANY CLASS OR REPRESENTATIVE ACTION OR PROCEEDING.

YOUR ACCESS TO AND USE OF THE SERVICES IS CONDITIONED ON YOUR ACCEPTANCE OF AND COMPLIANCE WITH ALL APPLICABLE TERMS. If you do not agree to these Terms or our Privacy Notice, then please cease using the Services immediately. We reserve the right to change these Terms at any time (see "**Changes to these Terms**" below). By accessing, browsing and/or using the Services after updates to these Terms have been posted, you agree to be bound by the updated Terms.

## Consequences of Non-Compliance

Your failure to comply with the Terms may result in the suspension or termination of your account and/or access to the Services, and may subject you to civil and criminal penalties.

## NO MEDICAL ADVICE

The Services are not a replacement for medical treatment of any kind. As with any health-related issue, share the Sword App with your doctor and discuss any potential interactions with your current treatment before beginning to use the App.

SWORD DOES NOT PRACTICE MEDICINE OR ANY OTHER LICENSED HEALTHCARE PROFESSION AND DOES NOT PROVIDE MEDICAL ADVICE. DO NOT USE THE SWORD APP OR SERVICES INSTEAD OF CONSULTING WITH A MEDICAL PROFESSIONAL.

THE INFORMATION AND OTHER CONTENT AVAILABLE ON OR THROUGH THE SERVICES ARE FOR INFORMATIONAL PURPOSES ONLY AND ARE NOT INTENDED TO SUBSTITUTE FOR PROFESSIONAL MEDICAL ADVICE, DIAGNOSIS OR TREATMENT. YOU SHOULD ALWAYS CONSULT WITH YOUR PHYSICIAN OR OTHER QUALIFIED HEALTH CARE PROVIDER REGARDING QUESTIONS YOU HAVE ABOUT ANY MEDICAL CONDITION BEFORE MAKING HEALTH CARE DECISIONS.

IF YOU THINK YOU MAY HAVE A MEDICAL EMERGENCY, CALL YOUR DOCTOR OR 911 IMMEDIATELY. NEVER DELAY IN SEEKING PROFESSIONAL MEDICAL ADVICE OR DISREGARD SUCH ADVICE BECAUSE OF SOMETHING YOU HAVE READ ON THE APP OR WEBSITES!

RELIANCE ON ANY INFORMATION OR OTHER CONTENT AVAILABLE ON OR THROUGH THE SERVICES OR OTHERWISE PROVIDED BY SWORD IS SOLELY AT YOUR OWN RISK.

## II. CHANGES

### Changes to these Terms

Sword reserves the right, in its sole discretion, to amend the Terms, at any time and without prior notice, including to change, modify, add to, update or remove terms and conditions (collectively "amend" or "update"). If we choose to amend the Terms, we will update the "Last Updated" date at the top of the Terms and post the updated version. In the case of a material change, we may notify you by e-mail or another means.

By continuing to use the Services after we have posted an updated version of the Terms or otherwise notified you of an update, you are affirming that you agree to be bound by the amended Terms. This provision is subject to a few limitations in the "**Governing Law & Dispute Resolution**" section below. If the amended Terms are not acceptable to you, your only recourse is to stop using the Services.

No other modification, amendment, supplement of or to the Terms will be binding on Sword unless it is in writing and signed by an authorized representative of Sword.

### Modifications and Updates to the Services

Sword reserves the right, in its sole discretion, to modify or discontinue offering the Services, in whole or in part, including any features, functionality, tools or content thereof, at any time, for any reason or no reason, with or without notice to you.

We may from time to time develop and provide updates for the App, which may include upgrades, bug fixes, patches and other error corrections and/or new features, functionality, tools or content (collectively, "Updates"). Updates may also modify or delete features, functionality, tools or content in their entirety. Based on your mobile device settings, when your mobile device is connected to the Internet either: (a) the Updates will automatically download and install; or (b) you may receive notice of or be prompted to download and install available Updates. Please promptly download and install all Updates. If you do not, portions of the App may not properly operate. All Updates will be deemed part of the App and be subject to all terms and conditions of the Terms.

You agree that Sword has no obligation to provide any updates or to continue to provide or enable any particular features, functionality, tools or content, and will not be liable with respect to any such modifications, discontinuance or deletions.

### III. ELIGIBILITY

The Services are only offered to individuals over the age of 18 or the age of majority. You may only use the App and Services if you are at least 18 years old or the age of majority under your state law and able to form a binding agreement. The App does not provide medical treatment or diagnosis and is not a replacement for medical treatment. You are solely responsible for your usage of the App. If you have or think you may have any serious health condition(s), do not use the Services and contact your doctor right away for further medical evaluation. If you experience severe pain or loss of function in any body part during use of the Sword App or after using the Sword App, stop your use immediately and consult your doctor.

### IV. ACCOUNTS

#### Account Registration

Before you are able to use the Services, you will be required to register for a user account. You may register to create an account via the Website or App.

You may not register for an account:

- if you are not able to form legally binding contracts (for example, you represent that you are at least 18 years of age or other legal age under applicable state law, and/or have the necessary capacity or authority, to enter binding agreements like this);
- if you are a person barred from receiving entering into contracts under the laws of the United States or other applicable jurisdiction;
- on behalf of any other person; or
- on behalf of any company or other entity.

No person may have more than one active account at any given time.

#### Account Set-Up

You agree to provide complete, accurate and up-to-date information during the registration process and to update such information as necessary to ensure that it remains complete, accurate and up-to-date. Please note that the name and contact information that you submit when you register may be used and shared with our payment processing services provider and otherwise used in accordance with our Privacy Notice.

When you create your account, you will be asked to create a username and password, which you will be solely responsible for safeguarding. We encourage you to use "strong" passwords (passwords that use a combination of upper and lower case letters, numbers and symbols) with your Sword account or any other account that you may connect to your Sword account. You agree not to disclose your username or password to any third party, and you agree to notify Sword immediately at [inquiries@swordhealth.com](mailto:inquiries@swordhealth.com) of any unauthorized use of your account. You further acknowledge and agree that you will be solely responsible for any activities or actions on or through your account, whether or not you have authorized such activities or actions. Sword cannot and will not be liable for any loss or damage arising from your failure to comply with the above requirements.

You will also be asked for your mobile phone number when setting up your account. You consent and agree to receive text message(s) to your mobile phone account number to complete your account set-up and to communicate with Sword regarding the Services. Standard text message rates apply through your mobile phone provider. Sword cannot and will not be liable for fees incurred by your mobile phone provider.

## Account Suspension and Cancellation

We reserve the right to cancel accounts of Users who fail to comply with the Terms, including failure to comply with the terms and conditions regarding User conduct, as set forth in the "**User Conduct Guidelines**" section below.

## V. USER CONDUCT GUIDELINES

Users may not:

- access, copy, store or use any aspect of the App, Website, or Services for any purpose other than your own personal use;
- distribute, disclose, publish, sell, rent or otherwise expose any aspect of the Services to any third party, except your physician or other qualified health care provider, for any purpose except your own personal treatment, or permit your physician or other health care provider to access, copy, store or use any aspect of the Services for any other purpose;
- prepare derivative works from the Services;
- share or transfer your account to any person without our consent;
- circumvent our systems, policies, determinations as to your account status, including by attempting to access or use the Services if your account has been suspended or cancelled or you have otherwise been temporarily or permanently prohibited or blocked from using the Services;
- access, search, collect information from, or otherwise interact with the Services whether by manual methods or by use of any software, device, script or robot, or by any other means (automated or otherwise), including by "scraping," "crawling" or "spidering" the Services, to systematically retrieve content in order to create or compile, directly or indirectly, in single or multiple downloads, a collection, compilation, database, directory or the like (except that crawling is permissible without further authorization if done in accordance with the provisions of the robots.txt file only);
- access the Services other than through the currently available, published interfaces that are provided by Sword, unless you have been specifically authorized to do so in a separate agreement with Sword;
- mirror or frame any page, feature, functionality, tool or content the Services, copy any aspect of the Services, or use or display Sword's name or any of Sword's other trademarks, logos or proprietary materials, without Sword's express written consent;
- interfere with, disrupt, damage or compromise the Services or our systems or the access of any user, host or network in any way, including through the use of viruses, cancel bots, Trojan horses, harmful code, flood pings, denial-of-service attacks, backdoors, packet or IP spoofing, forged routing or electronic mail address information or similar methods or technology or by overloading, flooding, spamming, mail-bombing the Services or otherwise imposing an unreasonable or disproportionately large load on the Website or App;
- access, tamper with or use non-public areas of any of the Services, Sword's computer systems, or the technical delivery systems of Sword's providers;
- probe, scan, or test the vulnerability of any system or network of Sword or its providers, or breach or circumvent any security or authentication measures of such system or network;
- avoid, bypass, remove, deactivate, impair, descramble, or otherwise circumvent any technological measure implemented by Sword or any of Sword's providers or any other third party to protect the Services;
- forge any TCP/IP packet header or any part of the header information in any e-mail or posting, or in any way use the Services to send altered, deceptive or false source-identifying information;

- attempt to decipher, decompile, disassemble or reverse engineer any of the code or software used to provide the Services;
- export or re-export the Services, except in compliance with the export control laws and regulations of any relevant jurisdictions;
- otherwise abuse the Services or breach the Terms; or
- attempt to do any of the foregoing, or advocate, encourage, assist or permit any third party to do any of the foregoing.

## **Investigations**

Sword reserves the right to investigate and prosecute violations of any and all reports, complaints and claims, or otherwise suspected misconduct or violations of the law to the fullest extent of the law.

Without limiting the foregoing, you acknowledge that Sword has the right, but not the obligation, at any time and without prior notice, to monitor access to or use of the Services by any user, if we believe in good faith that it is reasonably necessary (i) to comply with any law or regulation or satisfy any legal process or governmental request (for example, a subpoena, warrant, order or other requirement of a court, administrative agency or other governmental body), (ii) to respond to claims asserted against Sword, (iii) to enforce and to ensure a user's compliance with the Terms, including the investigation of potential violations, (iv) to conduct risk assessments, and prevent, detect and investigate incidents of fraud, security and technical issues, (v) to protect the rights, property or safety of Sword, its users or members of the public, and (vi) for the purpose of operating and improving the Services (including for customer support purposes).

## **User Cooperation**

You agree to cooperate with and assist Sword or its representative in good faith, in any such investigations, including by providing us with such information as we may reasonably request.

## **Account Suspension and Cancellation**

We may, in our discretion, without liability to you and without limiting our other remedies, with or without prior notice and at any time, decide to limit, suspend, deactivate or cancel your account in response to a suspected breach of the Terms, and take technical and legal steps to prevent you from using our Services. If Sword has suspended your account due to your actual or suspected breach of the Terms, such suspension will continue until the suspected breach is cured or otherwise resolved to Sword's reasonable satisfaction.

Once your account is terminated, Sword will have the right, but not the obligation to delete any or all of the information and content submitted, uploaded or otherwise provided by you.

## **Policy Enforcement**

When an issue arises, we reserve the right to consider such User's performance history and the specific circumstances in applying our policies, and to determine how strictly to enforce such policies in an effort to achieve a fair outcome for all parties involved.

## VI. INTELLECTUAL PROPERTY RIGHTS & LICENSES

### The Services

The Services, including any and all Websites and Apps, and all features, functionality, tools and content thereof, is protected by copyright, trademark, patent and other laws of the United States and foreign countries. You acknowledge and agree that the Services, and all intellectual property rights therein, are the exclusive property of Sword and its licensors. You will not remove, alter or obscure any copyright, trademark, service mark, patent marking, or other proprietary rights notices incorporated in or accompanying the Services.

Without limiting the foregoing, you acknowledge and agree that the trade names, logos, and other trademarks and service marks associated with Sword, including "Sword" and "Sword app" (collectively, the "Sword Marks") are the property of Sword, and that you are not permitted to use the Sword Marks without our prior written consent. All other trademarks are the property of their respective owners.

Subject to your compliance with the Terms, Sword grants you a limited non-exclusive, non-transferable, non-assignable and non-sublicensable license to access and use the Services, including the right to download and install a copy of the App on each mobile device that you own or control, for your own personal use only, and not for use for any business purpose or commercial activity. This license is granted for the sole purpose of enabling you to personally use the Services as provided by Sword in the manner permitted by the Terms.

You may not use, copy, reproduce, distribute, license, sell, transfer, publish, post, publicly display, publicly perform, transmit, broadcast, adapt, modify, prepare derivative works based upon, or otherwise exploit any features, functionality, tools or content of the Services in any form or by any means, or sublicense the rights granted in the Terms, except as expressly permitted herein, without the prior written permission of Sword or the intellectual property owner, as applicable.

This foregoing license is subject to modification or revocation at any time at Sword's sole discretion. No licenses or rights are granted to you by implication or otherwise under any intellectual property rights owned or controlled by Sword or its licensors, except for the licenses and rights expressly granted in the Terms. All rights not expressly granted to you by the Terms are hereby reserved.

### Feedback

We welcome and encourage you to provide feedback, comments, ideas and suggestions for improvements, enhancements and modifications to the Services ("Feedback"). You may submit Feedback by e-mailing us at [inquiries@swordhealth.com](mailto:inquiries@swordhealth.com). You acknowledge and agree that all Feedback you give us (i) will be treated as non-confidential, and (ii) will be the sole and exclusive property of Sword. Without limiting the foregoing, you acknowledge that your Feedback may be disseminated or used by Sword or its affiliates for any purpose whatsoever, including developing, improving and marketing products. You hereby irrevocably transfer and assign to Sword all of your right, title, and interest in and to all Feedback, including all worldwide patent, copyright, trade secret, moral and other proprietary or intellectual property rights therein, and waive any moral rights you may have in such Feedback.

You agree to sign and deliver such documents, and otherwise provide such assistance, as may reasonably be required from time to time to perfect Sword's rights in such improvements, enhancements and modifications.

## VII. THIRD PARTY TERMS

### Third Party Charges and Mobile Alerts

You are solely responsible for any fees or charges incurred to access the Services through an Internet access provider or other third party, including without limitation data charges incurred if you are not connected to WiFi access, charges to receive SMS messages or other mobile access, which may be billed to you or deducted from your prepaid balance by your mobile provider. You agree that Sword is not liable in any way for any third party charges.

### Links to Third Party Websites and Services

Sword does not recommend or endorse any tests, physicians or other health care providers, products or procedures that may be referenced, discussed, or advertised on the Services. Any health care products or brands are provided for informational purposes only and are not endorsed by Sword Health.

The Services may provide links to third-party brands, websites, resources or services. You acknowledge and agree that Sword is not responsible or liable for (i) the availability, terms or practices of third-party brands, websites, resources or services, or (ii) the content, products or services available on or through such brands, websites, resources or services, including that any information provided is complete, accurate or up-to-date. Links to such brands, websites, resources or services do not imply any endorsement by Sword of such brands, websites, resources or services or the content, products or services available on or through such brands, websites, resources or services. You acknowledge sole responsibility for and assume all risk arising from your use of any such websites, resources or services or the content, products or services available on or through such brands, websites, or services.

We are not responsible or liable for any damage or harm resulting from your interactions with third-party brands, websites, or services, or the content, products or services available on or through third-party brands, websites, or services.

### Apps Downloaded from Third Party App Stores

Our App may be available for download from third party app stores which are not owned or operated by Sword. When downloading, installing, accessing, using or browsing the App, you must comply with any applicable third party terms and conditions, including any End User License Agreement, your mobile device agreement, or any wireless data service agreement, and ensure that your use of the App is not in violation of any such terms or conditions.

### Apple Store

Without limiting the foregoing, any Apps accessed through or downloaded from Apple's App Store (an "App Store Download") may only be used (i) on an Apple-branded product that runs the iOS (Apple's proprietary operating system), and (ii) as permitted by the "Usage Rules" set forth in the **Apple App Store Terms and Conditions**.



Without limiting the foregoing, the following applies to Apple App Store Downloads:

- You acknowledge and agree that (i) these Terms are between you and Sword only, and not Apple, and (ii) Sword, not Apple, is solely responsible for the App Store Download and content thereof. Your use of the App Store Download must comply with the App Store Terms and Conditions.
- You acknowledge that Apple has no obligation whatsoever to furnish any maintenance and support services with respect to the App Store Download.
- In the event of any failure of the App Store Download to conform to any applicable warranty, you may notify Apple, and Apple will refund the purchase price for the App Store Download to you and to the maximum extent permitted by applicable law, Apple will have no other warranty obligation whatsoever with respect to the App Store Download. As between Sword and Apple, any other claims, losses, liabilities, damages, costs or expenses attributable to any failure to conform to any warranty will be the sole responsibility of Sword.
- You acknowledge that, as between Sword and Apple, Apple is not responsible for addressing any claims you have or any claims of any third party relating to the App Store Download or your possession and use of the App Store Download, including: (i) product liability claims; (ii) any claim that the App Store Download fails to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection or similar legislation.
- You acknowledge that, in the event of any third-party claim that the App Store Download or your possession and use of that App Store Download infringes that third party's intellectual property rights, as between Sword and Apple, Sword, not Apple, will be solely responsible for the investigation, defense, settlement and discharge of any such intellectual property infringement claim to the extent required by the Terms.
- You acknowledge and agree that Apple and its subsidiaries, are third-party beneficiaries of the Terms as related to your license of the App Store Download, and that, upon your acceptance of the terms and conditions of the Terms, Apple will have the right (and will be deemed to have accepted the right) to enforce the Terms as related to your license of the App Store Download against you as a third party beneficiary thereof.
- Without limiting any other terms of the Terms, you must comply with all applicable third party terms and conditions when using the App Store Download.

## Google Play

Without limiting the foregoing, any Apps accessed through or downloaded from Google Play (an "App Store Download") may only be used (i) on a Device that meets Google's system and compatibility requirements, and (ii) as permitted by the "Usage Rules" set forth in the **Google Play Terms of Service**.

Without limiting the foregoing, the following applies to Google Play App Store Downloads:

- You acknowledge and agree that (i) these Terms are between you and Sword only, and not Google, and (ii) Sword, not Google, is solely responsible for the App Store Download and content thereof. Your use of the App Store Download must comply with the Google Play Terms of Service.
- You acknowledge that Google has no obligation whatsoever to furnish any maintenance and support services with respect to the App Store Download.
- In the event of any failure of the App Store Download to conform to any applicable warranty, you may notify Google, and Google will refund the purchase price for the App Store Download to you and to the maximum extent permitted by applicable law, Google will have no other warranty obligation whatsoever with respect to the App Store Download. As between Sword and Google, any other claims, losses, liabilities, damages, costs or expenses attributable to any failure to conform to any warranty will be the sole responsibility of Sword.
- You acknowledge that, as between Sword and Google, Google is not responsible for addressing any claims you have or any claims of any third party relating to the App Store Download or your possession and use of the App Store Download, including: (i) product liability claims; (ii) any claim that the App Store Download fails to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection or similar legislation.

- You acknowledge that, in the event of any third-party claim that the App Store Download or your possession and use of that App Store Download infringes that third party's intellectual property rights, as between Sword and Google, Sword, not Google, will be solely responsible for the investigation, defense, settlement and discharge of any such intellectual property infringement claim to the extent required by the Terms.
- You acknowledge and agree that Google and its subsidiaries, are third-party beneficiaries of the Terms as related to your license of the App Store Download, and that, upon your acceptance of the terms and conditions of the Terms, Google will have the right (and will be deemed to have accepted the right) to enforce the Terms as related to your license of the App Store Download against you as a third party beneficiary thereof.
- Without limiting any other terms of the Terms, you must comply with all applicable third party terms and conditions when using the App Store Download.

## **VIII. WARRANTIES, DISCLAIMERS, LIMITATION OF LIABILITY & INDEMNIFICATION**

### **Warranties by Users**

You represent and warrant to Sword that:

- you have the power and authority to accept and agree to the Terms,
- you own or control all of the rights necessary to provide the information that you provide and to grant the rights and licenses granted herein,
- the exercise by Sword of the rights granted by you hereunder will not cause Sword to violate any applicable laws, rules or regulations, to infringe the rights of any third party, and
- all account information provided by you will be complete, accurate and up-to-date when provided, and updated as necessary to ensure that it remains complete, accurate and up-to-date.

### **Disclaimers**

EXCEPT AS EXPRESSLY PROVIDED HEREIN, THE SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE" WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED. TO THE MAXIMUM EXTENT NOT PROHIBITED BY APPLICABLE LAW, SWORD EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR TITLE OR RIGHTFUL CLAIM, WARRANTIES AS TO THE RELIABILITY OR AVAILABILITY OF THE SERVICES, OR THAT USE OF THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE, WARRANTIES AS TO THE COMPLETENESS, ACCURACY OR TIMELINESS OF ANY CONTENT.

### **Limitation of Liability**

YOU ACKNOWLEDGE AND AGREE THAT, TO THE MAXIMUM EXTENT NOT PROHIBITED BY LAW:

- THE ENTIRE RISK ARISING OUT OF OR RELATING TO YOUR USE OF THE SERVICES IS AND REMAINS WITH YOU.
- WITHOUT LIMITING THE FOREGOING, SWORD DISCLAIMS ANY AND ALL LIABILITY RELATED TO (I) YOUR USE OF OR INABILITY TO USE THE SERVICES, (II) THE ACTS OR OMISSIONS OF ANY PERSON(S) WITH WHOM YOU MAY COMMUNICATE OR INTERACT AS A RESULT OF YOUR USE OF THE SERVICES, AND (III) ANY CONTENT ACCESSED OR VIEWED IN CONNECTION WITH THE USE OF THE SERVICES.

- YOU ACKNOWLEDGE AND AGREE THAT THE ACCESSING AND USING THE PLATFORM AND CONTENT, VIEWING CONTENT IS DONE AT YOUR OWN DISCRETION AND RISK, AND YOU AND HEREBY RELEASE SWORD AND WAIVE ANY AND ALL CLAIMS AND CAUSES OF ACTION WITH RESPECT TO ANY DAMAGES CAUSED BY ANY OF THE FOREGOING.

- IN NO EVENT WILL SWORD BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND, OR DAMAGES FOR LOST REVENUES OR PROFITS, LOSS OF DATA OR LOSS OF GOODWILL, SERVICE INTERRUPTION, COMPUTER DAMAGE OR SYSTEM FAILURE, OR FOR ANY DAMAGES FOR PERSONAL OR BODILY INJURY OR EMOTIONAL DISTRESS ARISING OUT OF OR IN CONNECTION WITH ANY OF THE FOREGOING, WHETHER BASED IN WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE) OR ANY OTHER LEGAL THEORY, AND WHETHER OR NOT SWORD HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGE, EVEN IF A LIMITED REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

- IN THE CASE OF THE UNITED STATES, CERTAIN STATE LAWS DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES OR THE EXCLUSIVE OR LIMITATION OF CERTAIN DAMAGES AS SET FORTH IN THIS SECTION, SO THESE LIMITATIONS AND EXCLUSIONS APPLY TO YOU ONLY TO THE EXTENT PERMITTED BY APPLICABLE LAW. IN THE EVENT THAT THE FOREGOING LIMITATION OF LIABILITY IS DETERMINED BY A COURT OF COMPETENT JURISDICTION TO BE UNENFORCEABLE, SWORD'S AGGREGATE LIABILITY ARISING OUT OF OR IN CONNECTION WITH ANY AND ALL OF THE FOREGOING, SHALL BE LIMITED TO ONE HUNDRED U.S. DOLLARS (US \$100).

## **Basis of the Bargain**

YOU ACKNOWLEDGE AND AGREE THAT THE WARRANTY DISCLAIMERS AND LIMITATIONS OF LIABILITY SET FORTH ABOVE ARE ESSENTIAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN SWORD AND YOU, AND WILL SURVIVE AND APPLY EVEN IF YOUR REMEDIES ARE FOUND OR ALLEGED TO HAVE FAILED OF THEIR ESSENTIAL PURPOSE.

## **Exclusions**

NOTHING IN THE TERMS FURTHER IS INTENDED TO EXCLUDE OR LIMIT ANY CONDITION, WARRANTY, RIGHT OR LIABILITY WHICH MAY NOT BE LAWFULLY EXCLUDED OR LIMITED. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES OR CONDITIONS OR THE LIMITATION OR EXCLUSION OF LIABILITY FOR LOSS OR DAMAGE CAUSED BY NEGLIGENCE, BREACH OF CONTRACT OR BREACH OF IMPLIED TERMS, OR INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR EXCLUSION OF LIABILITY FOR LOSS OR DAMAGE FROM DEATH OR PERSONAL INJURY. ACCORDINGLY, ONLY THE ABOVE LIMITATIONS IN THIS SECTION VIII THAT ARE LAWFUL IN YOUR JURISDICTION WILL APPLY TO YOU, AND OUR LIABILITY WILL BE LIMITED TO THE MAXIMUM EXTENT REQUIRED BY LAW.

## **Indemnification**

To the maximum extent not prohibited by applicable law, you agree to release, indemnify, and hold Sword its parent, subsidiaries, affiliates, licensors and service providers, and its and their officers, directors, shareholders, agents, employees and representatives, harmless (collectively "indemnify" or any variation thereof) from and against any claims, liabilities, damages, losses, costs and expenses, including, any bodily injury, illness, death or damage to any real or personal property, or any other injuries, losses, or damages (whether compensatory, direct, incidental, consequential or otherwise) of any kind, and including reasonable legal fees and litigation expenses and costs, arising out of or relating to or in any way connected with (i) your access to or use of the Services, including

any and all features, functionality, tools, content and promotions available on and through the Services, (ii) any interactions with any other person as a result of your use of the Services, (iii) your breach of the Terms or the documents incorporated therein, including any violation of national, federal, state or local or other applicable laws, rules or regulations or any infringement or misappropriation of the rights of any third party, and (iv) your gross negligence or willful misconduct.

**Obligation to Defend.** You agree that, at Sword's option, you will conduct the defense of any such claim or action; provided that (i) Sword may nevertheless participate in such defense or settlement negotiations and pay its own costs associated therewith, and (ii) you will not enter into any settlement or other compromise without the prior written approval of Sword (which approval shall not be unreasonably withheld), unless such settlement or other compromise includes a full and unconditional release of the relevant parties from all liabilities and other obligations in respect of such claim or action.

**No Implied Indemnity.** No person or entity shall be entitled to any form of equitable or implied indemnification at any time, except as provided by the Terms.

## **IX. GOVERNING LAW & DISPUTE RESOLUTION**

PLEASE READ THIS SECTION CAREFULLY. IT AFFECTS YOUR RIGHTS AND WILL HAVE A SUBSTANTIAL IMPACT ON HOW CLAIMS YOU AND SWORD HAVE AGAINST EACH OTHER ARE RESOLVED.

### **Governing Law**

The Terms shall be governed by and interpreted in accordance with the laws of the state of New York, USA, without regard to conflict of law principles.

### **Arbitration & Class Action Waiver**

All disputes, claims, controversies and matters arising out of or relating to or in connection with the Terms or the breach, termination, enforcement, interpretation or validity thereof, or to the use of the Services, including any Website or App (collectively, "Disputes") shall be exclusively settled by binding arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules ("AAA Rules"), and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The arbitration shall take place in New York, New York, USA, before a single neutral arbitrator appointed in accordance with the AAA Rules and shall be conducted in the English language. You acknowledge that by agreeing to arbitration as the exclusive forum for the resolution of all Disputes, you are waiving their right to a trial by jury.

All arbitrations shall be conducted and resolved on an individual basis, and not a class-wide, multiple plaintiff or similar basis. No arbitration shall be consolidated with any other arbitration proceeding involving any other person or entity.

### **Jurisdiction and Venue**

In the event that arbitration is not available, you and Sword agree that any and all Disputes will be brought in the federal or state courts located in New York, New York, USA, and each agrees that such courts shall have exclusive jurisdiction and venue for any such actions. Further, Sword also may seek injunctive or other equitable relief for breach of these Terms in any court of competent jurisdiction wherever located. You consent to the jurisdiction of

and venue in such courts and waive any objection as to inconvenient forum.

## Fees and Costs

The prevailing party in any suit, action or proceeding, including any arbitration proceeding, will be entitled to recover its reasonable legal fees and costs and expenses from the other party.

## Future Amendments to this Section

Both of us agree that if we make any amendment to this "**Governing Law & Dispute Resolution**" section (other than an amendment to any notice address or site link provided herein) in the future, that amendment will not apply to any claim that was filed in a legal proceeding against us prior to the effective date of the amendment. However, the amendment will apply to all other disputes or claims governed by this section that have arisen or may arise between you and Sword. We will notify you of amendments to this section by posting the amended Terms on [www.swordhealth.com](http://www.swordhealth.com). If you do not agree to the amended terms, you may close your account within 30 days and you will not be bound by the amended dispute resolution terms. If you do not have an account (or once you have closed your account, if applicable), you must cease using the Services immediately. By rejecting any change, you are agreeing that you will arbitrate any Dispute between you and Sword in accordance with the provisions of this "**Governing Law & Dispute Resolution**" section as of the date you first accepted the Terms (or accepted any subsequent changes to the Terms).

## X. MISCELLANEOUS

### Privacy

Our collection and use of personal information about Users (other than protected health information) is governed by our Privacy Notice, incorporated herein by reference. Please see our **Notice of Privacy Practices** to learn more about how we use protected health information.

### Entire Agreement

These Terms of Service and our Privacy Notice constitute the entire and exclusive understanding and agreement between you and Sword regarding your access to and use of the Services, including the content, Website and App, and supersede and replace any and all prior or contemporaneous oral or written understandings or agreements between you and Sword and regarding the subject matter hereof.

### Assignment

You may not assign, transfer, delegate or sublicense any of your rights or obligations under the Terms, including by operation of law or merger or consolidation, without our express prior written consent, which may be granted or withheld in our sole discretion. Any attempted assignment, transfer, delegation or sublicense without the foregoing

consent will be null and void. Sword may assign, transfer, delegate and/or sublicense our rights and obligations under the Terms, in whole or in part, in its sole discretion, without restriction. **Subject to the foregoing, the Terms will bind and inure to the benefit of the parties, their successors and assigns.**

## No Agency

Any provisions of the Terms that contemplate performance or observance subsequent to the expiration or termination of this Agreement shall survive such expiration or termination.

## Survival of Terms

Any provisions of the Terms that contemplate performance or observance subsequent to the expiration or termination of this Agreement shall survive such expiration or termination.

## Notices

Any notices or other communications permitted or required hereunder, including those regarding modifications to the Terms, will be in writing and given by Sword (i) via e-mail (in each case to the address that you provide), or (ii) by posting to the Website or via the App. For notices made by e-mail, the date on which such notice is transmitted will be deemed the date of receipt.

## Waiver

Our failure to exercise any right or enforce any obligation under these Terms of Service or to take action with respect to a breach by you or others will not constitute a waiver of such right, obligation or breach. The waiver of any right, obligation or breach will be effective only if in writing and signed by a duly authorized representative of Sword. In addition, no waiver granted in any instance shall constitute a waiver in any other instance.

## Remedies

Except as expressly set forth in the Terms, the exercise by either party of any of its remedies under the Terms will be without prejudice to its other remedies available under contract, at law, in equity or otherwise.

## Severability

Except as otherwise provided in the Terms, if an arbitrator or a court of competent jurisdiction finds any provision of the Terms to be invalid, void or unenforceable, in whole or in part, for any reason, the offending provision will be enforced to the maximum extent permissible and will not affect the validity or enforceability of the remaining provisions, which will remain in full force and effect.

## Headings

The headings in the Terms are for reference purposes only and do not limit or otherwise affect the meaning or

interpretation of any of the provisions hereof.

## **Third Party Beneficiaries**

Except as otherwise expressly set forth herein, the Terms do not and are not intended to confer any rights or remedies upon any person other than the parties hereto.

## **Construction**

In the Terms, unless the context requires otherwise: (i) "herein," "hereof," "hereunder," "hereto," and similar terms refer to the Terms collectively and as a whole, and not merely to the specific section, paragraph or clause in which the term appears, (ii) "or" connotes any combination of all or any of the items listed, and (iii) "including" (and any of its derivative forms) means "including but not limited to."

## **Contact Us**

If you have any questions or concerns, please contact Sword at [inquiries@swordhealth.com](mailto:inquiries@swordhealth.com).

## **California Residents**

The Complaint Assistance Unit of the Division of Consumer Content of the California Department of Consumer Affairs may be contacted in writing at 1625 North Market Boulevard, Suite N112, Sacramento, CA 95834 or by telephone at (916) 445-1245 or (800) 952-5210. Hearing impaired persons may call TDD (800)-326-2297 or TDD (916)-928-1227, see [www.dca.ca.gov](http://www.dca.ca.gov) for additional information.

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