

Beats Health Patient Terms of Service

**PLEASE READ THIS AGREEMENT CAREFULLY BEFORE USING THIS SERVICE.
BY USING THE SERVICE OR CLICKING AGREE USER IS AGREEING TO BE BOUND BY
THIS AGREEMENT.**

This agreement is between Beats Health, Inc., a Delaware corporation (**Beats Health**), and the user agreeing to these terms (**User**), and covers all services provided by Beats Health to User (**Service**).

1) PATIENT INTERFACE This agreement provides User access and use of the Beats Health Patient Eligibility Verification Platform interface service, as requested by a customer of Beats Health.

2) USE OF THE BEATS HEALTH PATIENT ELIGIBILITY VERIFICATION PLATFORM PATIENT INTERFACE This agreement provides User access and use of the Beats Health patient eligibility verification interface service, as requested by a customer of Beats Health.

a. **User Responsibilities**

- **Restrictions and Responsibilities.** User may not (i) sell, resell, rent or lease the Service, use the Service beyond their internal operations or reverse engineer the Service, (ii) use the Service to store or transmit infringing, unsolicited marketing emails, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party rights (including without limitation any privacy rights), (iii) interfere with or disrupt the integrity or performance of the Service, (iv) attempt to gain unauthorized access to the Service or its related systems or networks, (v) remove or modify any proprietary marking or restrictive legends in the Service, (vi) use the Service in violation of any law, (vii) access the Service to build a competitive product or service, or copy any feature, function or graphic of the Service for competitive purposes. User is solely responsible for User Information (defined below), must use commercially reasonable efforts to prevent unauthorized access to the Service, must notify Beats Health promptly of any such unauthorized access, and may use the Service only in accordance with its user guide and applicable law.
- **User Information.** All data, information, images, and files entered or uploaded by User to the Service remains the sole property of User, as

between Beats Health and User (User Information), subject to the other terms of this agreement. User grants Beats Health a non-exclusive, royalty-free license to modify, store, transmit and otherwise use the User Information for purposes of Beats Health performing under this agreement.

- **Accuracy of Information Provided by User.** User represents and warrants to Beats Health that all User Information provided under User's account, by User or on their behalf, are true, correct, and accurate (if User learns that any information provided to Beats Health as part of the Service is not true, correct, or accurate, User must immediately notify Beats Health in writing of this fact, and provide the true, correct, and accurate information). Beats Health relies on User representations regarding the truth, accuracy, and compliance with laws regarding User Information.
- **Use of the Services by and on behalf of Minors.** User is not eligible to use the Service unless they are at least 18 years old and otherwise have the legal capacity to enter into a binding contract in their jurisdiction.
 - If User is an unemancipated minor over the age of 13, User may only use the Service if: (i) such use has been approved of by User's parent or legal guardian, (ii) User uses the Service under their supervision, and (iii) User's parent or legal guardian has agreed to this agreement on User's behalf.
 - If User is the parent or guardian of an unemancipated minor, User may use the Service and enter into this agreement on behalf of such minor. By doing so, User represents and warrants that they have the legal capacity to act on behalf of such minor; and they agree, in such capacity, that all provisions of this agreement that applicable to them are equally applicable to such minor.
 - Under no circumstances may the Service be used by a child under 13 years old.

2) Data Aggregation Services and De-identified Data. Beats Health may use protected health information to provide you with data aggregation services (as that term is defined by HIPAA) and to create de-identified data in accordance with 45 CFR 164.514(a)-(c). Beats Health shall solely own all right, title, and interest, in any de-identified data including layouts of healthcare insurance cards it creates from

protected health information and or other data onboarded, or images uploaded to Beats Health platform. Beats Health and its affiliates may use and disclose, during and after this agreement, all aggregate, anonymized information, and de-identified data for purposes of enhancing the Service, technical support, and other business purposes, all in compliance with the HIPAA Privacy Standards, including without limitation the limited data set and de-identification of information regulations.

4) WARRANTY AND DISCLAIMERS

- a. **Mutual Compliance with Laws.** Each party represents and warrants to the other party that it will comply with all applicable laws regarding its performance under this agreement.
- b. **NO MEDICAL ADVICE PROVIDED BY BEATS HEALTH.** The Service does not provide medical advice, provide medical or diagnostic services, or prescribe medication. Use of the Service is not a substitute for the User's or the User's medical provider's judgment in making decisions regarding his or her medical care. User agrees that he or she, along with User's medical provider, are solely responsible for verifying the accuracy of information and for all of their decisions or actions with respect to medical care and treatment, including without limitation, all of their acts or omissions. Any use or reliance by User upon the Service will not diminish that responsibility. Neither Beats Health nor its licensors assume any liability or responsibility for damage or injury (including death) to User, a patient, other person, or tangible property arising from any use of the Service, or any medical decisions made by User or User's medical provider based on data collected, transmitted or displayed by or on the Services.
- c. **USER'S COMPLIANCE WITH MEDICAL RETENTION LAWS AND PATIENT RECORDS ACCESS.** User and their medical provider are responsible for understanding and complying with all state and federal laws related to retention of medical records, access to information and authorization to release data.
- d. **DISCLAIMERS.** BEATS HEALTH DISCLAIMS ALL OTHER WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY THAT THE SERVICE WILL BE UNINTERRUPTED, ERROR FREE OR WITHOUT DELAY, AND THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. WHILE BEATS HEALTH TAKES REASONABLE PHYSICAL, TECHNICAL AND ADMINISTRATIVE MEASURE TO SECURE THE SERVICE, BEATS HEALTH DOES NOT GUARANTY THAT THE SERVICE CANNOT BE COMPROMISED.

5) MUTUAL CONFIDENTIALITY

- a. **Definition of Confidential Information.** Confidential Information means all non-public information disclosed by a party (**Discloser**) to the other party (**Recipient**), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure (**Confidential Information**). Beats Health's Confidential Information includes without limitation the non-public portions of the Service.
- b. **Protection of Confidential Information.** The Recipient must use the same degree of care that it uses to protect the confidentiality of its own confidential information (but in no event less than reasonable care) not to disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of this agreement. The Recipient must make commercially reasonable efforts to limit access to Confidential Information of Discloser to those who need such access for purposes consistent with this agreement and who have signed confidentiality agreements with Recipient no less restrictive than the confidentiality terms of this agreement. The Recipient may disclose Confidential Information (i) to the extent required by law or legal process; (ii) to its legal or financial advisors, provided that such advisors are bound by a duty of confidentiality that includes use and disclosure restrictions; and (iii) as required under applicable securities regulations.
- c. **Exclusions.** Confidential Information excludes information that: is or becomes generally known to the public without breach of any obligation owed to Discloser; was known to the Recipient prior to its disclosure by the Discloser without breach of any obligation owed to the Discloser; is received from a third party without breach of any obligation owed to Discloser; or was independently developed by the Recipient without use or access to the Confidential Information.

6) PROPRIETARY RIGHTS

- a. **Reservation of Rights by Beats Health.** The software, workflow processes, user interface, designs, know-how and other technologies provided by Beats Health as part of the Service are the proprietary property of Beats Health and its licensors, and all right, title, and interest in and to such items, including all associated intellectual property rights, remain only with Beats Health. Beats Health reserves all rights unless expressly granted in this agreement.

7) LIMITS ON LIABILITY

- a. **No Indirect Damage.** Beats Health is not liable for any indirect, special, or consequential damages (including without limitation, costs of delay, loss of data or information, lost profits or revenues or anticipated cost savings) arising under or related to this agreement, even if advised of the possibility of such loss or damage.
- b. **Limit.** Beats Health's total liability for all damages arising under or related to this agreement (in contract, tort or otherwise) does not exceed \$500.

8) TERM AND TERMINATION

- a. **Term.** This agreement continues until all Services are terminated with or without cause by Beats Health, User, or the User's medical provider. Notwithstanding the foregoing, Beats Health may terminate User's access to and use of the Services, at its sole discretion, at any time and without notice to User. User may terminate this agreement by deleting User's account on the Services.
- b. **Suspension of Service for Violation of Law or the Agreement.** Beats Health may immediately suspend User's access to the Service and remove applicable User Information if it in good faith believes that, as part of using the Service, User may have violated a law or any term of this agreement. Beats Health may try to contact User in advance, but it is not required to do so.

9) INDEMNITY. User must indemnify, defend, and hold harmless Beats Health against all third-party claims (including without limitation by governmental agencies), demands, damages, costs, penalties, fines, and expenses (including reasonable attorneys' fees and costs) arising out of or related to: User's breach of any term in this agreement, any unauthorized use, access or distribution of the Service by User, violation of any individual's privacy rights related to information submitted under User's account, or fraudulent, invalid, duplicate, incomplete, unauthorized, or misleading information submitted under User's account or by User.

10) GOVERNING LAW AND FORUM FOR DISPUTES

- a. **Delaware Law.** This agreement is governed by the laws of the State of Delaware (without regard to conflicts of law principles) for any dispute between the parties or relating in any way to the subject matter of this agreement.
- b. **Agreement to Arbitrate.** User and Beats Health agree that any dispute, claim or controversy arising out of or relating to this agreement or the breach, termination, enforcement, interpretation or validity thereof or the use of the Services or User Information (collectively, "**Disputes**") will be settled by binding arbitration,

except that each party retains the right: (i) to bring an individual action in small claims court and (ii) to seek injunctive or other equitable relief in a court of competent jurisdiction to prevent the actual or threatened infringement, misappropriation or violation of a party's copyrights, trademarks, trade secrets, patents or other intellectual property rights (the action described in the foregoing clause (ii), an **"IP Protection Action"**). Without limiting the preceding sentence, User will also have the right to litigate any other Dispute if User provides Beats Health with written notice of User's desire to do so by email within thirty (30) days following the date User first agrees to this Terms of Service (such notice, an **"Arbitration Opt-out Notice"**). If User doesn't provide Beats Health with an Arbitration Opt-out Notice within the thirty (30) day period, User will be deemed to have knowingly and intentionally waived User's right to litigate any Dispute except as expressly set forth in clauses (i) and (ii) above. The exclusive jurisdiction and venue of any IP Protection Action or, if User timely provide Beats Health with an Arbitration Opt-out Notice, will be the state and federal courts located in Delaware and each of the parties hereto waives any objection to jurisdiction and venue in such courts. Unless User timely provides Beats Health with an Arbitration Opt-out Notice, **User acknowledges and agrees that User and Beats Health are each waiving the right to a trial by jury or to participate as a plaintiff or class member in any purported class action or representative proceeding.** Further, unless both User and Beats Health otherwise agree in writing, the arbitrator may not consolidate more than one person's claims and may not otherwise preside over any form of any class or representative proceeding. If this specific paragraph is held unenforceable, then this Section 9, excluding Section 9(a), will be deemed void. Except as provided in the preceding sentence, this Section 9 will survive any termination of this agreement.

- c. **Arbitration Rules.** The arbitration will be administered by the American Arbitration Association (**"AAA"**) in accordance with the Commercial Arbitration Rules and the Supplementary Procedures for Consumer Related Disputes (**the "AAA Rules"**) then in effect, except as modified by this section. (The AAA Rules are available at www.adr.org/arb_med or by calling the AAA at 1-800-778-7879.) The Federal Arbitration Act will govern the interpretation and enforcement of this Section.

- d. **Arbitration Process.** A party who desires to initiate arbitration must provide the other party with a written Demand for Arbitration as specified in the AAA Rules. The arbitrator will be either a retired judge or an attorney licensed to practice law and will be selected by the parties from the AAA's roster of arbitrators. If the parties are unable to agree upon an arbitrator within seven (7) days of delivery of the Demand for Arbitration, then the AAA will appoint the arbitrator in accordance with the AAA Rules.
- e. **Arbitration Location and Procedure.** Unless User and Beats Health otherwise agree, the arbitration will be conducted in the county where User resides. If User's claim does not exceed \$10,000, then the arbitration will be conducted solely based on the documents that User and Beats Health submit to the arbitrator, unless User request a hearing, or the arbitrator determines that a hearing is necessary. If User's claim exceeds \$10,000, User's right to a hearing will be determined by the AAA Rules. Subject to the AAA Rules, the arbitrator will have the discretion to direct a reasonable exchange of information by the parties, consistent with the expedited nature of the arbitration.
- f. **Arbitrator's Decision.** The arbitrator will render an award within the time frame specified in the AAA Rules. The arbitrator's decision will include the essential findings and conclusions upon which the arbitrator based the award. Judgment on the arbitration award may be entered in any court having jurisdiction thereof. The arbitrator's award of damages must be consistent with the terms of Section 6 above as to the types and amounts of damages for which a party may be held liable. The arbitrator may award declaratory or injunctive relief only in favor of the claimant and only to the extent necessary to provide relief warranted by the claimant's individual claim. If User prevails in arbitration User will be entitled to an award of attorneys' fees and expenses, to the extent provided under applicable law. Beats Health will not seek, and hereby waives all rights it may have under applicable law to recover, attorneys' fees and expenses if it prevails in arbitration.
- g. **Fees.** User's responsibility to pay any AAA filing, administrative and arbitrator fees will be solely as set forth in the AAA Rules. However, if User's claim for damages does not exceed \$75,000, Beats Health will pay all such fees unless the arbitrator finds that either the substance of User's claim or the relief sought in User's Demand for Arbitration

- was frivolous or was brought for an improper purpose (as measured by the standards set forth in Federal Rule of Civil Procedure 11(b)).
- h. **Changes.** Notwithstanding the provisions of Section 10(a), if Beats Health changes this Section 9 after the date User first accepted these Terms (or accepted any subsequent changes to these Terms), User may reject any such change by sending Beats Health written notice within 30 days of the date such change became effective, as indicated in the revision date below or in the date of Beats Health's email to User notifying User of such change. By rejecting any change, User is agreeing that User will arbitrate any Dispute between User and Beats Health in accordance with the provisions of this Section 9 as of the date User first accepted these Terms of Service (or accepted any subsequent changes to these Terms of Service).

11) OTHER TERMS

- a. **Entire Agreement and Changes.** This agreement constitutes the entire agreement between the parties, and supersedes all prior or contemporaneous negotiations or agreements, whether oral or written, related to this subject matter. User is not relying on any representation concerning this subject matter, oral or written, not included in this agreement. No representation, promise or inducement not included in this agreement is binding. No modification or waiver of any term of this agreement is effective unless signed by both parties. Notwithstanding the foregoing, Beats Health may modify this agreement by posting modified Terms of Service on the Beats Health website and electronically notifying User of the changes thirty (30) days prior to the effective date of such changes. User agrees that by continuing to use the Service after posting of the modified Terms of Service, User agrees to be bound by the changes.
- b. **Feedback.** If User provides feedback or suggestions about the Service, then Beats Health (and those it allows to use its technology) may use such information without obligation to User.
- c. **Beta Features.** If User is invited to access any beta features of the Service or a User accesses any beta features of the Service, User acknowledges that: (a) such features have not been made commercially available by Beats Health; (b) such features may not operate properly, be in final form or fully functional; (c) such features may contain errors, design flaws or other problems; (d) it may not be possible to make such features fully functional; (e) use of such

features may result in unexpected results, corruption or loss of data, or other unpredictable damage or loss; (f) such features may change and may not become generally available; and (g) Beats Health is not obligated in any way to continue to provide or maintain such features. These beta features are provided AS IS, with all faults. User assume all risk arising from use of such features, including, without limitation, the risk of damage to User's computer system or the corruption or loss of data.

- d. **No Assignment.** Neither party may assign or transfer this agreement to a third party, except that Beats Health may assign this agreement (without consent) as part of a merger, or sale of all or substantially all of the business or assets, of Beats Health.
- e. **Independent Contractors and Enforceability.** The parties are independent contractors with respect to each other. If any term of this agreement is invalid or unenforceable, the other terms remain in effect.
- f. **Survival of Terms.** All terms survive termination of this agreement that, by their nature, survive for a party to assert its rights and receive the protections of this agreement. The Convention on Contracts for the International Sale of Goods does not apply.

Last Updated: August 5, 2021