

**Terms & Conditions**  
**Effective Date: November 9, 2023**

**1. Introduction**

These Terms & Conditions (“**Agreement**” or “**Terms**”) are an agreement between you and The Health Plan of West Virginia, Inc. (“**The Health Plan**,” “**us**,” “**our**,” or “**we**”). These Terms govern the use of our website (“**Website**”), mobile application (“**Application**”), and our products, services, benefit records, and all capabilities included within, and/or made available through the Website or the Application. Our Website, the Application, and such products, services, benefit records, and all capabilities therein are collectively referred to as the “**Services**.” These Terms apply to you, whether you are using or accessing the Services for yourself, or on behalf of a minor or person to whom you are a caregiver, and set forth the legally binding terms for your use of the Services.

Our Services may interact with other products and services owned and operated by The Health Plan or other services operated by unaffiliated third parties. The Health Plan does not provide any healthcare services.

When using certain Services, you may be presented with Service-specific terms (“**Service Specific Terms**”). To the extent these Terms conflict with the Service Specific Terms, the Service Specific Terms shall control. In addition, in the event of any conflict between these Terms and any agreement between us and your plan sponsor, the agreement with your plan sponsor shall control. In the event of any conflict between these Terms and any medical or prescription drug insurance policy, managed care contract, plan, or agreement maintained by your insurer or plan sponsor, the policy, plan, or agreement shall control.

**2. Acceptance of Terms of Service**

THESE TERMS APPLY TO THE SERVICES, SOFTWARE, AND APPLICATIONS MADE AVAILABLE THROUGH THE WEBSITE AND THE APPLICATION. THIS AGREEMENT GOVERNS THE ACCEPTABLE USE OF THE SERVICES AND CONTENT ACCESSED THROUGH THE SERVICES, AND YOUR RIGHTS, OBLIGATIONS, AND RESTRICTIONS REGARDING YOUR USE OF THE SERVICES. BY DOWNLOADING, REGISTERING FOR ACCESS, ACCESSING, OR USING THE SERVICES, OR BY AFFIRMING ACCEPTANCE OF THESE TERMS, YOU AGREE THAT YOU HAVE READ, UNDERSTOOD, AND AGREED TO BE BOUND BY THESE TERMS AND OUR PRIVACY POLICY. IF YOU DO NOT AGREE, DO NOT USE THE SERVICES. IN NO EVENT SHALL USE OF THE SERVICES CREATE A FIDUCIARY/AGENCY RELATIONSHIP WITH THE HEALTH PLAN.

NOTE SECTION 18.A. CONTAINS INFORMATION ABOUT DISCLAIMERS; SECTION 18.B. CONTAINS INFORMATION ABOUT LIABILITY LIMITS; SECTION 20 INCLUDES INFORMATION ABOUT CHOICE OF LAW, WAIVER OF CLASS ACTION, AND TIME LIMIT ON THE FILING OF CLAIMS; AND SECTION 3 CONTAINS INFORMATION ABOUT HOW THESE TERMS CAN BE AMENDED.

**3. Updates to Terms**

The Health Plan reserves the right to update or change these Terms at any time by posting the most current version of the Terms on the Website and Application with a new Effective Date

shown. You are responsible for checking these Terms and the Privacy Policy periodically for changes. All such changes in the Terms shall be effective from the stated Effective Date. Your continued use of the Website or Application after we post any changes to the Terms signifies your agreement to any such changes. If you do not agree to these Terms, you must discontinue using the Services.

#### **4. Term**

This Agreement will remain in full force and effect at all times until you cease using the Services, delete the Application, and/or this Agreement is otherwise terminated in accordance with these Terms. The Health Plan can suspend or terminate your access to the Services, in whole or in part, at any time, immediately and without notice. All terms that by their nature may survive termination of this Agreement shall be deemed to survive such termination.

#### **5. Electronic Form/Communications**

By accessing Services, you consent to having this Agreement provided to you in electronic form and receiving communications from us electronically. We may communicate with you by postal mail, email, or by posting notices in the Application or on the Website. You agree that all agreements, notices, disclosures, and other communications we provide to you electronically satisfy any legal requirements that such communications be in writing.

#### **6. Access and Use of the Services**

The Application, the Website, the content offered in the Application or on the Website ("**Content**"), and the Services offered are intended for your personal, noncommercial use in accordance with these Terms.

Subject to Section 22 addressing Force Majeure, The Health Plan uses the means it believes are reasonable to provide access to the Services 24 hours a day, 7 days a week, and to provide necessary repair or maintenance operations required for the smooth operation of the Services. The Health Plan disclaims any liability for any failure or deficiency in the performance of the Services for any reason, including but not limited to whether such reason may be maintenance, breakdown, or any event beyond The Health Plan's reasonable control.

You acknowledge that data conversion and transmission in the Services are subject to the possibility of human and machine errors, omissions, delays, and losses, including inadvertent loss of data or damage to media, that may give rise to loss or damage. The Health Plan disclaims any liability for any such errors, omissions, delays, or losses. You acknowledge and agree that access and/or use of the Services, or download of the Application, through connection to the Internet and/or use of mobile devices is inherently insecure and that information transmitted and received through such use may be subject to unauthorized interception, diversion, corruption, loss, access, and disclosure. The Health Plan disclaims any liability for any adverse consequences whatsoever of your access and/or use of the Services, or download of the Application, through such connection to the Internet, and/or such use of mobile devices, and disclaims any liability for any use by you of an Internet connection in violation of any Applicable Laws (defined below), or any violation of the intellectual property rights of another.

To access and/or use the Services, or download the Application, you may be required to provide The Health Plan with information about yourself (or the person on whose behalf you are accessing the Services or downloading the Application). This information may include name, address, email

address, telephone number, date of birth, member identification number, taxpayer identification number, and physical location. By submitting such information to The Health Plan, you hereby represent and warrant that any and all such information that you provide to The Health Plan is true and correct, and you authorize The Health Plan to use any method it chooses to verify the truth and accuracy of the information to the extent The Health Plan needs to do so to protect its rights or other users of the Services. The Health Plan may terminate your access to the Services if you fail to provide truthful and accurate information.

The Health Plan has the right to modify the Content and Services at any time in its sole discretion. Except as otherwise set forth in a separate contract for a specific service, your only right with respect to any dissatisfaction with any modifications made pursuant to this provision, or any policies or practices of The Health Plan in providing its products, services, Content, or any Services is to stop using the Services.

### **7. Children and Minors.**

If you are under thirteen (13) years old, you may not access, use, or download the Services. If you are a minor between 13 and 17 years of age using the Services, your parent or guardian must consent to your use of the Services. By accessing, using, or downloading any of the Services, you represent and warrant that you are eighteen (18) years old or older, or otherwise that your parent(s) or guardian(s) has consented to your use of the Services.

Under state and federal laws, there are certain types of medical information that a parent or guardian of a minor age 13 to 17 may not view without consent of the minor or at the discretion of the healthcare provider. Because of these requirements, a parent or guardian may not be granted full access to the Services of a minor in this age category.

If you are a parent or guardian accessing your child's PHI (as defined in Section 14), you attest that you have the right to access such PHI, and that if you are no longer a parent or guardian with legal authority to access the PHI, you will immediately stop using the Services to access such PHI and will alert us to turn off your access.

### **8. Carrier Charges.**

You are responsible to pay carrier data, messaging, and other fees resulting from accessing the Services. Data and messaging (including SMS text messages) plans may be required to use certain features of the Services. Standard data and messaging charges, fees, and taxes from your carrier may apply. You are responsible to determine what fees may apply.

### **9. Security.**

The Health Plan has implemented commercially reasonable technical and organizational measures designed to secure your personal information from accidental loss and from unauthorized access, use, alteration, or disclosure. However, we cannot guarantee that unauthorized third parties will never be able to defeat those measures or use your personal information for improper purposes. You acknowledge that you provide your personal information at your own risk. If you wish to keep your communications to us private, you should not communicate with us using the Services.

### **10. Account Management**

Some functionality of the Services requires you to have a user account associated with a username and password (“**Account Credentials**”) to securely access the functionality. You are solely responsible for maintaining the strict confidentiality of your Account Credentials. You shall not share your Account Credentials with any other person and shall not permit any other person to access or use the Services using your Account Credentials. You will be solely responsible for any damages or losses that may be incurred or suffered by you, The Health Plan, or any other person or entity as a result of your failure to maintain the strict confidentiality of your Account Credentials. You shall immediately inform The Health Plan in writing of any need to deactivate your account due to potential or actual security concerns. The Health Plan disclaims any liability for any harm related to the misappropriation of your Account Credentials, your intentional or negligent disclosure of such Account Credentials to another person, or your unauthorized sharing of Account Credentials that may allow another person or entity to access or use the Services. We prohibit all forms of indirect and “spoofed” access.

### **11. Communication Services.**

The Services may contain email services, chat areas, and/or other message, communication, or other mechanisms designed to enable you to communicate with us (the “**Communication Services**”). All such communications, information, and content, including the ideas contained in such materials, as well as usernames, profiles, or similar materials you submit, upload, embed, display, or communicate (collectively, “**Distribute**”) is referred to as “**User Content.**” You agree to use the Communication Services only to Distribute User Content that conforms to these Terms. The Health Plan specifically disclaims any liability with regard to the User Content and any actions resulting from your participation in any Communication Services.

The Health Plan has no obligation to monitor the User Content. However, The Health Plan reserves the right to review materials posted to the Communication Services and to remove any User Content at any time, without notice, for any reason and in its sole discretion. The Health Plan specifically disclaims any liability with regard to the User Content and any actions resulting from your participation in any Communication Services. The Health Plan representatives may monitor your User Content, but we cannot monitor all of the User Content on the Services and we do not attempt to do so.

You acknowledge that chats and other communications by users are not controlled or endorsed by The Health Plan, and such communications shall not be considered reviewed, screened, or approved by The Health Plan. Managers and hosts of Communications Services are not authorized spokespersons of The Health Plan, and their views do not necessarily reflect those of The Health Plan.

### **12. Proprietary Rights**

The Services and all Content are owned by The Health Plan or its licensors, such as services and content provided by your plan sponsor, state or federal healthcare program, or insurer and any explanation of benefits, plan documents, plan summaries, and related information, and are protected by laws governing copyrights, patents, trademarks, trade secrets, and/or other proprietary rights. In addition, The Health Plan owns a copyright in the selection, coordination, arrangement, and enhancement of the Content and a copyright in the Application and Website. All trademarks, service marks, trade names, and trade dress appearing on the Application or Website (“**Marks**”) are proprietary to The Health Plan and/or our licensors or licensees. Except as otherwise permitted by Applicable Law, you agree not to copy, reproduce, publish, transmit, distribute, perform, sell, create derivative works of, or in any way exploit, any of the Marks, the

Content, or the Services, in whole or in part, without The Health Plan's prior written consent. You may download Content for your personal, non-commercial use only as provided in these Terms, or as may be otherwise permitted by Applicable Law or by The Health Plan from time to time, provided that you do not alter any such Content and you keep intact all copyright and other proprietary notices and you do not use the Content in any way that would express or imply an association between you and the products and services of The Health Plan or any third party. You acknowledge that you do not acquire any ownership rights in any Content downloaded from the Services. Copying or storing of Content for other than personal use is expressly prohibited without prior permission from us or as may be permitted by Applicable Law. You may not frame or utilize framing techniques to enclose any trademark, logo, or other proprietary information (including images, text, page layout, or form) of The Health Plan without express written consent. If you engage in any uses not permitted by these Terms, all permissions or licenses granted by The Health Plan in these Terms shall automatically terminate.

Except for allowing you to use the Services for your personal use as set forth in the paragraph above, when you use the Services, you are not receiving a license or any other rights from The Health Plan, including intellectual property or other proprietary rights of The Health Plan. You understand that you have no rights to the Services or any other The Health Plan property except as we indicate in these Terms.

The Health Plan is committed to respecting and protecting the legal rights of intellectual property owners. If you believe infringements upon your intellectual property rights are taking place on or through the Services, please contact us by sending a letter to us at The Health Plan of West Virginia, Inc., Attn: Legal Department, 1110 Main Street, Wheeling, WV 26003.

### **13. Medical Disclaimers; No Provider/Patient Relationship; Provider Information**

Your use of the Services and/or any information or Content that is included on or transmitted through the Services is not intended to and will not create any healthcare provider/patient relationship of any kind between you and The Health Plan or its affiliates – this shall be true whether you are utilizing any of the Services (e.g., provider location services) or links to affiliated services that may assist you in locating a medical professional.

The Health Plan does not recommend or endorse any specific drugs, tests, physicians, products, procedures, opinions, or other information that may be transmitted by healthcare providers or other professionals or organizations. Your reliance upon any information obtained or used by you is solely at your own risk. The Health Plan disclaims any liability for the accuracy of any information or Content provided or sent to you or others of the Services, including your physician, other healthcare providers, or their representatives. You shall be responsible for verifying the accuracy of any information you send or receive through the Services, including any of your health information, data, or records. **IF YOU HAVE AN EMERGENCY, DO NOT USE THE SERVICES TO CONTACT A HEALTHCARE PROVIDER – INSTEAD YOU SHOULD IMMEDIATELY CALL 911 AND REQUEST EMERGENCY CARE ASSISTANCE.**

The Health Plan disclaims any liability in any way to you for any decision you make or any actions that occur in connection with the use of the Services in locating, contacting, and/or starting a relationship with a medical professional. While The Health Plan makes every attempt to promote the accuracy of the data in its provider directory, The Health Plan cannot and does not guarantee the availability of any provider that is part of the Services at any particular time. The Health Plan will not be liable or responsible in any way for cancelled or otherwise unfulfilled appointments or

any injury resulting therefrom, or from any other claim, penalty, loss, or injury resulting from the use of the Services whatsoever.

You should perform an independent investigation prior to selecting a healthcare professional by making telephone calls to the appropriate licensing authorities to verify listed credentials and education, and to further verify information about a particular doctor or other healthcare provider (including the provider's participation in any network of providers made available under your health insurance policy or plan) by confirming with the provider's office, your current provider, the medical association relative to the provider's specialty, and your state medical board, and consulting other resources as may be appropriate.

In connection with using the Services to locate medical professionals, you understand that you are responsible for choosing to begin and/or continue a relationship with any provider. Providers listed on the Services may have a contractual relationship with The Health Plan.

The Services will provide you with lists of providers who may be suitable to deliver the healthcare that you are seeking based on information you provide to the Services. In connection with this process, The Health Plan (a) does not recommend or endorse any particular provider, (b) does not make any representations or warranties with respect to these providers or the quality of the healthcare services they may provide, and (c) does not guarantee that the provider is a participant in or will remain a participant in any network of providers made available under your health insurance policy, state or federal healthcare program, or plan.

The Health Plan makes the Services available for the purposes of providing an informative resource. The Health Plan makes every attempt to keep the provider information updated but cannot and does not guarantee the timeliness and accuracy of any or all of the Content. The Health Plan disclaims liability for any errors or omissions or for the results obtained from the use of such Content.

The provider and/or practice information that appears on the Services is intended for general reference purposes only. Neither the Services nor The Health Plan provides any advice, qualification, or certification about any particular provider. The Health Plan disclaims any liability in connection with your use of any particular provider.

#### **14. Compliance with Laws; Transmission of Data**

Certain Services involve access to, and the processing of, PHI (defined below) that is provided to us pursuant to the agreements with you, your employer, a state or federal healthcare program, and/or your plan sponsor regarding the provision of health insurance, managed care benefits, and/or group health plan related services ("**User Documents**"). With respect to its operation of the Services, and to the extent required by (a) the Health Insurance Portability and Accountability Act of 1996, as amended, and its implementing regulations ("**HIPAA**"), and (b) the Health Information Technology and Economic and Clinical Health Act ("**HITECH**") and any regulations promulgated thereunder (HIPAA and HITECH are collectively the "**Privacy Laws**"), The Health Plan will, subject to the User Documents or in its role as a health plan, comply with the Privacy Laws applicable to covered entities and business associates and maintain the confidentiality of any Protected Health Information which is individually identifiable health information that is protected by HIPAA ("**PHI**") transmitted or made available through the functionality of the Services or any affiliated services. If you are a participant or beneficiary of a health insurance policy, managed care benefits, and/or group health plan, our use of PHI is governed by HIPAA and other Applicable Laws and the User Documents.

You acknowledge and agree that these Terms may be amended from time to time if necessary to comply with the Privacy Laws. The requirements of this Section 14 will survive the termination of your use of the Services.

When you use the Services to upload, transmit, or receive PHI, you agree that, to the extent applicable, you shall comply with all applicable local, state, federal, or international law, rule, or regulation, including, but not limited to, the Privacy Laws, any court order, or other order or decision in any governmental, administrative, or judicial proceeding (collectively “**Applicable Laws**”). You represent and warrant that you will, at all times, comply with all directly or indirectly Applicable Laws that may now or hereafter govern the gathering, use, transmission, processing, receipt, reporting, disclosure, maintenance, and storage of PHI.

To the extent permissible under Applicable Laws, you hereby grant to The Health Plan a perpetual, unlimited license to use the data and information that is compiled or passes through the Services that specifically relates to you, your patient care, your provider’s procedures and diagnoses, policies, coverage, or payments, and any related information (collectively the “**User Data**”), in a de-identified format as defined under the Applicable Laws for data benchmarking, sharing, warehousing, resource utilization, and similar data analysis services; provided, however, that The Health Plan shall comply with the Applicable Laws in connection with any such actions.

The Health Plan disclaims any liability for your use or misuse of PHI or other information transmitted, monitored, stored, or received while using the Services whether to a provider located using the Services or otherwise. The Health Plan reserves the right to amend or delete any User Data or other uploaded content (along with the right to revoke any access to the Services) that in The Health Plan’s sole discretion violates any provisions of this Section or these Terms in general.

## **15. Prohibited Conduct**

You may only use the Services for lawful purposes in compliance with Applicable Laws. In your access, use, or download of the Services, you shall not:

- Infringe any copyright, patent, right of privacy, right of publicity, trademark, trade secret, or other right of The Health Plan or any third party;
- Abuse, defame, harass, or stalk any individual or other user of the Services;
- Interfere or attempt to interfere with, or damage or attempt to damage, the Services or the proper working of the Services, including, without limitation, through the use of cancel bots, denial of service attacks, flood pings, forged routing or electronic mail address information, harmful code, packet or IP spoofing, phishing, Trojan horses, viruses, or similar methods or technology;
- Use any deep-link, page-scrape, robot, spider, or other automatic device, program, algorithm, or methodology, or any similar or equivalent manual process, to access, acquire, copy, or monitor any portion of the Services or any Content, or in any way reproduce or circumvent the navigational structure or presentation of the Services or any Content, to obtain or attempt to obtain any materials, documents, or information through any means not purposely made available through the Services;
- Misrepresent your identity, provide false information, impersonate another person or entity, misrepresent your affiliation with a person or entity, including, without limitation, The Health Plan, create or use a false identity, or attempt to use another user’s account;
- Attempt to obtain unauthorized access to any website or mobile device application through the Services;

- Engage, directly or indirectly, in transmission of chain letters, junk mail, spam, or any other type of unsolicited solicitation;
- Collect, reverse look-up, trace or seek to trace, manually or through automated means, information about other users of the Services without their express consent or other information relating to the Services;
- Use any meta tags or any other hidden text utilizing The Health Plan name, service marks, trademarks, or product or service names;
- Advertise, offer to sell, or sell any goods or services set forth in the Services or otherwise use the Services to solicit other users, except as expressly permitted by The Health Plan;
- Engage in any activity that interferes with any third party's ability to use or enjoy the Services;
- Probe, scan, or test the vulnerability of the Services or any network connected to the Services, or breach the security or authentication measures on the Services or any network connected to the Services;
- Take any action that imposes an unreasonable or disproportionately large load on the infrastructure of the Services or The Health Plan's systems or networks, or any systems or networks connected to the Services or The Health Plan;
- Attempt to reverse engineer, reverse assemble, reverse compile, decompile, disassemble, translate any of the Services, or otherwise alter, defraud, or create false results from any of the Services;
- Create any product or service that competes directly or indirectly with any of the Services; or
- Assist any third party in engaging in any activity prohibited by these Terms.

## **16. Social Media Policy**

Comments to The Health Plan-sponsored sites, including our accounts on social media sites like Facebook, X (formerly known as Twitter), LinkedIn, Instagram, and YouTube, are welcome and encouraged, and we look forward to hearing from you. To promote respectful discussion, we request that you strive for comments that are courteous and productive and that you avoid comments that are profane, obscene, offensive, sexually explicit, inappropriate, untruthful, inflammatory, or otherwise objectionable. You should not submit member information about yourself or others on The Health Plan-sponsored sites. Social media sites often foster debate of an issue; you are encouraged to engage in such exchanges with mutual respect for others' opinions.

All postings to The Health Plan-sponsored sites will be publicly available on the Internet and therefore publicly accessible without limitation or protection of any kind. Please consider the personal information shared, especially understanding that this information may be linked to your name and published on the Internet.

By posting a comment or other material to The Health Plan-sponsored sites as outlined above, you give The Health Plan the irrevocable right and a royalty-free, perpetual, unlimited, and irrevocable license to exercise all copyright, publicity, and moral rights with respect to any content you provide, which includes using your submission for any purpose in any form and on any media, including but not limited to displaying, modifying, reproducing, distributing, creating other works from, and/or publishing your submission. The Health Plan reserves the right to review all comments before they are posted, and to edit them to promote readability for other users.



The Health Plan further reserves the right to reject or remove comments for any reason including, but not limited to, our belief that the comments violate this social media policy, fail to meet The Health Plan's qualifications for posting, and/or violate these Terms. Any submission that fails to follow these Terms in any way or is otherwise irrelevant will not be posted. The Health Plan may not respond to your post, especially if it addresses individual medical, claims, or benefit issues. If you have a medical, claim, or benefit issue, please contact The Health Plan directly by phone, mail, or email, so that we may assist you.

We reserve the right to amend these terms and conditions when in our best judgment, such revisions are appropriate, such as to address issues that may arise and/or changes in our operations or the law. In posting material on The Health Plan-sponsored sites, you agree NOT to:

- Post material that The Health Plan determines is threatening, harassing, illegal, obscene, defamatory, slanderous, or hostile towards any individual or entity;
- Post contact information such as phone number, mailing address, or email address, of yourself or any other individual or entity in the body of your comment;
- Post material that infringes on the rights of The Health Plan or any individual or entity, including personal information, member information, intellectual property, and/or publication rights;
- Post material that promotes or advertises a commercial product or solicits business for, membership in, and/or financial or other support of any business, group, or organization except those that are officially sponsored by The Health Plan;
- Post chain letters, post the same comment multiple times, or otherwise distribute "spam";
- Allow any other individual or entity to use your identification for posting or viewing comments;
- Post comments under multiple names or using another person's or entity's name; or
- Post health or medical information about you or someone else.

The Health Plan reserves the right to do any or all of the following:

- Ban future posts from people who repeatedly violate these Terms. We may effect such bans by refusing posts from specific email addresses or IP addresses, or through other means as necessary; or
- Remove or edit comments at any time, whether or not they violate these Terms.

Without limiting any rights or obligations in Section 18, you agree to indemnify and hold harmless The Health Plan, its subsidiaries, affiliates, directors, officers, employees, successors, and assigns against any damages, losses, liabilities, judgments, fines, penalties, causes of action, costs, and/or expenses (including reasonable attorneys' fees and costs, and/or costs related to investigation) arising from and/or out of any claim relating to any material that you post, cause, or allow to be posted on The Health Plan-sponsored sites.

## **17. Links**

You may be able to access other websites or resources through links in the Application or on the Website. Because The Health Plan has no control over such sites and resources, you acknowledge and agree The Health Plan is not responsible for the availability of such external sites or resources, and does not endorse and is not responsible or liable for any content, advertising, products, services, or other materials available from such sites or resources nor does The Health Plan endorse any such sites or the products or services accessible on such sites. You further acknowledge and agree that The Health Plan shall not be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with use of

or reliance on any such content, goods, or services available on or through any such site or resource.

## **18. Legal Notices**

### **a. Disclaimer of Warranties.**

THE HEALTH PLAN WILL NOT BE HELD LIABLE, UNDER ANY CIRCUMSTANCE, FOR YOUR USE OF THE SERVICES AND MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, ABOUT THE INFORMATION AND MATERIALS APPEARING ON OR IN THE SERVICES, WHICH ARE PROVIDED "AS IS." THE HEALTH PLAN MAY MAKE IMPROVEMENTS AND/OR CHANGES TO THE SERVICES AT ANY TIME INCLUDING CHANGES TO THESE TERMS. THE HEALTH PLAN DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTY REGARDING THE ACCURACY, RELIABILITY, COMPLETENESS, OR TIMELINESS OF THE CONTENT, SERVICES, PRODUCTS, LINKS OR OTHER ITEMS CONTAINED THEREIN. THE HEALTH PLAN DOES NOT MAKE ANY REPRESENTATIONS THAT THE SERVICES OR ITS CONTENTS WILL BE ERROR FREE OR THAT DEFECTS WILL BE CORRECTED OR THAT THE SERVICES SHALL BE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS.

ALL CONTENT, PRODUCTS, AND THIRD-PARTY SERVICES ON OR OBTAINED THROUGH THE SERVICES, OR OBTAINED FROM A SITE TO WHICH THE SERVICES IS LINKED, ARE PROVIDED TO YOU "AS IS" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, SECURITY, OR ACCURACY. THE HEALTH PLAN DOES NOT ENDORSE AND IS NOT RESPONSIBLE FOR ANY PRODUCT OR SERVICE ACCESSED FROM THE SERVICES OR A LINKED SITE. OTHER THAN AS STRICTLY REQUIRED BY LAW, UNDER NO CIRCUMSTANCE WILL THE HEALTH PLAN BE LIABLE FOR ANY LOSS OR DAMAGE CAUSED BY YOUR RELIANCE ON INFORMATION OBTAINED THROUGH THE SERVICES OR A LINKED SITE, OR YOUR RELIANCE ON ANY PRODUCT OR SERVICE OBTAINED FROM OR THROUGH THE SERVICES OR A LINKED SITE.

### **b. Liability Limitation.**

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL THE HEALTH PLAN OR ITS AFFILIATES BE LIABLE TO YOU (OR ANY THIRD PARTY MAKING CLAIMS THROUGH YOU) FOR ANY DAMAGES WHATSOEVER, INCLUDING BUT NOT LIMITED TO ANY DIRECT, INDIRECT, SPECIAL, CONSEQUENTIAL, PUNITIVE, OR INCIDENTAL DAMAGES, OR DAMAGES FOR LOSS OF USE, PROFITS, DATA, OR OTHER INTANGIBLES, OR THE COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, UNAUTHORIZED ACCESS TO AND TAMPERING WITH YOUR PERSONAL INFORMATION OR TRANSMISSIONS, ARISING OUT OF OR RELATED TO THE USE, INABILITY TO USE, UNAUTHORIZED USE, PERFORMANCE, OR NON-PERFORMANCE OF THE SERVICES, EVEN IF THE HEALTH PLAN HAS BEEN ADVISED PREVIOUSLY OF THE POSSIBILITY OF SUCH DAMAGES AND WHETHER SUCH DAMAGES ARISE IN CONTRACT, NEGLIGENCE, TORT, UNDER STATUTE, IN EQUITY, AT LAW, OR OTHERWISE. UNLESS LIMITED OR MODIFIED BY APPLICABLE LAW, THE FOREGOING DISCLAIMERS, WAIVERS, AND LIMITATIONS SHALL APPLY TO THE MAXIMUM EXTENT PERMITTED, EVEN IF ANY REMEDY FAILS ITS ESSENTIAL PURPOSE. MOREOVER, UNDER NO CIRCUMSTANCES

WILL WE, OUR LICENSORS, OR LICENSEES BE HELD LIABLE FOR ANY DELAY OR FAILURE IN PERFORMANCE RESULTING DIRECTLY OR INDIRECTLY FROM AN ACT OF FORCE MAJEURE OR CAUSES BEYOND OUR OR THEIR REASONABLE CONTROL. WE MAY CHANGE OR DELETE CONTENT OR FEATURES OF OUR SERVICES IN ANY WAY, AT ANY TIME, AND FOR ANY REASON OR NO REASON. IF ANY PART OF THESE WARRANTY DISCLAIMERS OR LIMITATIONS OF LIABILITY IS FOUND TO BE INVALID OR UNENFORCEABLE FOR ANY REASON, THEN THE HEALTH PLAN'S AGGREGATE, CUMULATIVE LIABILITY FOR ALL CLAIMS UNDER SUCH CIRCUMSTANCES FOR LIABILITIES SHALL NOT EXCEED \$100. THE LIMITATIONS, EXCLUSIONS, AND DISCLAIMERS IN THIS SECTION AND ELSEWHERE IN THESE TERMS APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

**c. Indemnity/Release.**

You understand that you are personally responsible for your behavior while on the Application or using the Services and agree to indemnify and hold The Health Plan, and its affiliates, business partners, distributors, agents, representatives, and other authorized users, and their respective officers, directors, employees, and agents (collectively, the "**Indemnified Parties**"), harmless from and against any loss, damage, liability, cost, or expense of any kind (including attorneys' fees and costs, and costs of investigation) that the Indemnified Parties may incur in connection with any claim arising out of or related to your use of the Services or your violation of either these Terms, applicable law, or the rights of any third party.

**19. Availability and Use Outside of the United States**

The Services are controlled from facilities in the United States. The Health Plan makes no representations that the Services are appropriate or available for use in other locations. Those who access or use the Services from other jurisdictions do so at their own volition and are responsible for compliance with local law.

**20. Governing Law; Disputes**

These Terms shall be governed by and construed in accordance with the laws of the State of West Virginia without application of conflict of laws rules. Exclusive jurisdiction and venue in connection with any dispute between you and The Health Plan will rest in, and you and The Health Plan each agree to submit to the exclusive jurisdiction of, the courts of the State of West Virginia and the federal courts of the Northern District of West Virginia. You agree that in the event of any dispute between us, you will first contact us and make a good faith sustained effort to resolve the dispute before resorting to more formal means of resolution, including without limitation any court action. YOU HEREBY WAIVE ANY RIGHT YOU MIGHT HAVE TO RESOLVE ANY DISPUTE ON A CLASS ACTION BASIS OR ON BASES INVOLVING CLAIMS BROUGHT IN A PURPORTED REPRESENTATIVE CAPACITY ON BEHALF OF THE GENERAL PUBLIC OR OTHER PERSONS SIMILARLY SITUATED, AND YOU WAIVE YOUR RIGHT TO TRIAL BY JURY. Any cause of action you may have with respect to The Health Plan, the Services, or the Content must be commenced, if at all, no later than one year after the claim or cause of action arises or such claim or cause of action shall be barred. The date on which such claim or cause of action is discovered shall not delay the date, or otherwise result in a later date, by which a cause of action must commence.

**21. Void Where Prohibited**

The Health Plan reserves the right to limit, in its sole discretion, the provision and quantity of any Services, Content, or feature, product, or services thereof to any person or geographical area, whether by reason of the local law applicable in such geographic area or otherwise. Any offer for any feature, product, or service made on the Services and/or affiliated services is void where prohibited.

## **22. Force Majeure**

We will not be deemed to be in breach of these Terms or liable for any breach of these Terms or our Privacy Policy due to any event or occurrence beyond our reasonable control, including without limitation, acts of God, terrorism, war, invasion, failures of any public networks, electrical shortages, Internet outage, labor disturbance, earthquakes or floods, civil disorder, strikes, fire, pandemics, epidemics, or other disaster (including without limitation, natural, technological, or social).

## **23. Miscellaneous**

Except as otherwise provided herein, these Terms and the Privacy Policy are the entire agreement between you and The Health Plan, and supersede any and all prior or contemporaneous agreements between you and The Health Plan, relating to your use of the Services. The Health Plan may assign these Terms, in whole or in part, at any time. If any part of these Terms is determined to be invalid or unenforceable, it will not impact any other provision of these Terms, all of which will remain in full force and effect. Headings in the Terms are for convenience of reference only and shall not affect the interpretation or construction of this Agreement. The failure of The Health Plan to partially or fully exercise any rights or the waiver of The Health Plan of any breach of these Terms by you shall not prevent a subsequent exercise of such right by The Health Plan or be deemed a waiver by The Health Plan of any subsequent breach by you of the same or any other term of these Terms. The rights and remedies of The Health Plan under these Terms and any other applicable agreement between you and The Health Plan shall be cumulative, and the exercise of any such right or remedy shall not limit The Health Plan's right to exercise any other right or remedy. You agree that, except as otherwise expressly provided in this Agreement, there shall be no third-party beneficiaries to this Agreement.