



**SWORD HEALTH**

**Terms of Use**



# 01 Terms of Use

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SWORD Health, Inc. (“Sword Health”, “SWORD” “we”, “us” or “our”) provides content, functionality and other products and services to you when you visit swordhealth.com (the “Website”), use the Sword Health mobile application (the “App”), or use the Sword Health Digital Therapist© (collectively, the “Sites”).

Through our SWORD Health Professionals\*, we offer physical therapy or wellness services by enabling our users (“Users”) to report their health history to connect with physical therapists (Professionals) to obtain physical therapy or wellness services (“Services”). By accessing, browsing, and/or using the Sites and Services, you acknowledge that you have read and agree to be bound by these Terms of Use (“Terms”) and our Privacy Notice and Privacy Policy, both of which are incorporated herein by reference.

SWORD reserves the right to update or change these Terms of Use at any time and for any reason. By continuing to use the Site and Services, you agree to accept any such revisions to the Terms of Use. The date of the last update is stated at the top of this document. As long as you comply with the most current Terms of Use and are at least eighteen (18) years of age, SWORD grants you a non-exclusive, non-transferable, non-sublicensable, revocable, limited license to use the Sites and Services for your personal, non-commercial use, subject to any terms of service or usage restrictions by any third-party service company's terms of use (such as a wireless service provider).

**BY CLICKING ON "I AGREE" OR USING THE SERVICES, YOU AFFIRMATIVELY ACCEPT OF THESE TERMS OF USE.**

## Services

The Professionals who deliver physical therapy, medical, or other healthcare-related Services through SWORD are independent professionals practicing within a group of

independently owned professional practices collectively known as “SWORD Health Professionals.”

**Disclaimer:** SWORD Health, Inc., which operates the Sites, does not practice physical therapy, medicine, or offer healthcare services, and does not interfere with the practice of physical therapy or with the judgement of any other licensed profession by SWORD Health Professionals, each of whom is responsible for his or her services and compliance with the requirements applicable to his or her profession and license. SWORD Health, Inc. is not liable for any professional advice you obtain from a Professional via the Services. Nothing contained on the Site or through the Services is intended to constitute the practice of medicine or physical therapy or the provision of medical care or physical therapy or otherwise create a patient-provider relationship between SWORD Health, Inc. and you.

None of the Sites and Services (other than information and Services you receive from SWORD Health Professionals) should be considered physical therapy or clinical advice or an endorsement, representation or warranty that any medication or treatment is safe, appropriate, or effective for you.

## User 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 Sites. When you register on the Sites, you are required to register by entering your name and email and certain other information collected by SWORD (collectively “Information”). To register and use the Services, you must be at least eighteen (18) years of age, and be of legal age in your jurisdiction to form a binding contract. If you are not of legal age to form a binding contract, you may not register to use the Services. You agree that the Information that you provide to us at all times, including any Information you upload to the Sites, will be true, accurate, current, and complete. You may not register on the Sites more than once. You are responsible for maintaining the confidentiality for all activities that while you are using the Services.

## Prohibited Uses of Our Sites and Services

Users may not:

- access, copy, store or use any aspect of the Sites or the Services for any purpose other than your own personal, non-commercial use;
- distribute, disclose, publish, sell, rent or otherwise expose any aspect of the Sites to any third party;
- prepare derivative works from the Sites;
- circumvent our systems, policies, determinations as to your account status, including by attempting to access or use the Sites or Services if your use of the Sites and Services have been suspended or cancelled or you have otherwise been temporarily or permanently prohibited or blocked from using any services provided by SWORD;
- access, search, collect information from, or otherwise interact with the Sites 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", 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 Sites other than through the currently available published interface that are provided by SWORD;
- mirror or frame any page, feature, functionality, tool or content, or copy any aspect of the Sites;
- use or display SWORD's name or other trademarks, logos or proprietary materials ("Marks");
- interfere with, disrupt, damage or compromise the Sites or 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, © Copyright 2021 SWORD Health Technologies, Inc. All rights reserved. 4 flooding, spamming, mail-bombing the Sites or otherwise imposing an unreasonable or disproportionately large load on the Sites;

- access, tamper with or use non-public areas of any of the Sites, SWORD's computer systems, or the technical delivery systems of the Professionals;
- probe, scan, or test the vulnerability of any system or network of SWORD or its Professionals, 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 the Professionals or any other third party to protect the Sites and 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 Sites 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 or operate the Sites;
- export or re-export anything from the Sites or the Services, except in compliance with the export control laws and regulations of any relevant jurisdictions;
- otherwise abuse the Sites, Services, or Professionals; or
- attempt to do any of the foregoing, or advocate, encourage, assist or permit any third party to do any of the foregoing.

## **Fees and Purchase Terms**

As required, you agree to pay all fees in order to use or access the Sites or Services in effect at the time a fee or charge is due and payable. By providing SWORD with your credit card number, you agree that SWORD is authorized to immediately charge your account for all fees and charges due and payable to SWORD hereunder and that no additional notice or consent is required. If your health plan, employer or agency has arranged with SWORD to pay the fee or any portion of the fee, that fee adjustment will be reflected in the fee that you are ultimately charged. Please check with your employer, health plan or agency to determine if any Services will be reimbursed.

If you do not have insurance coverage for Services, or if your coverage is denied, you acknowledge and agree that you shall be personally responsible for all incurred expenses.

## Subscription Services

**Subscription Fees:** For Users who use our Services as part of our subscription-based services (“Subscription Services”), we will charge you a non-refundable “Subscription Fee” in the amount set forth in <https://direct.swordhealth.com/flow/plans-v2/>, which is incorporated into these Terms. Unless and until you cancel your Subscription Services, we will charge your account the specified Subscription Fee on a monthly basis (i.e., once per month). When you use our Subscription Services, you acknowledge and agree that we will process your payments through our third-party payment processor, Stripe Inc. and its affiliates. In processing your payments, Stripe may charge the payment card that you provide through Subscription Service for the amount of your Subscription Fee. You can read more about Stripe’s privacy practices at <https://stripe.com/privacy>.

We reserve the right to change your Subscription Fee from time to time, and will take steps to notify you of such changes to your Subscription Fee prior to such changes taking effect. We may suspend or terminate your use of our Services and your account, as provided below in “Termination” in the event of any payment delinquency.

**Cancellation:** You may cancel your Subscription at any time by contacting us at [help@swordhealth.com](mailto:help@swordhealth.com). Upon cancellation of your account and your Subscription Services, we will only cancel your Subscription Services. When you cancel your Subscription Services you will still be able to use your Subscription Services for the time you’ve already paid. For example, if you buy a one (1) month subscription and decide to cancel on January 2, you will have access to the Subscription Services until February 1. After you cancel the Subscription Services, you will be required to return the Digital Therapist®, using [help@swordhealth.com](mailto:help@swordhealth.com).

If you receive our Services outside of the Subscription Services for any reason, you may continue to utilize those Services.

## Termination

If you accept these Terms of Use and register for Sites and use the Services, but later decide that you want to deactivate your account, please contact SWORD at [help@swordhealth.com](mailto:help@swordhealth.com) and a support team member will verify your identity and complete your request. By deactivating your account as set forth above, you will also revoke any consents you have provided herein.

SWORD may suspend or terminate your use of the Sites or Services for any reason at any time.

SWORD reserves the right to maintain, delete or destroy all communications and materials posted or uploaded to the Sites pursuant to its internal record retention and/or content destruction policies. If you terminate your use of the Sites or Services, SWORD will have no further obligation to provide you with access to the Sites or to the Services, except to the extent that SWORD is obligated to provide you access to your health records or Professionals are required to provide you with continuing care under their applicable professional obligations to you.

## **DISCLAIMER OF WARRANTIES**

YOU EXPRESSLY AGREE THAT USE OF THE SITE OR SERVICES IS AT YOUR SOLE RISK. BOTH THE SITE AND SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. SWORD EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE OR PURPOSE, NON-INFRINGEMENT, TITLE, OPERABILITY, CONDITION, QUIET ENJOYMENT, VALUE, ACCURACY OF DATA AND SYSTEM INTEGRATION.

## **LIMITATION OF LIABILITY**

IN NO EVENT SHALL SWORD, SWORD HEALTH PROFESSIONALS OR ANY OF OUR AFFILIATES, BE LIABLE FOR ANY DIRECT DAMAGES IN EXCESS OF \$100.00 USD. TO THE EXTENT PERMITTED BY LAW, IN NO EVENT SHALL SWORD, SWORD HEALTH PROFESSIONALS OR ANY OF OUR AFFILIATES BE LIABLE FOR ANY SPECIAL, PUNITIVE, CONSEQUENTIAL, INCIDENTAL OR INDIRECT DAMAGES, HOWEVER CAUSED, ON ANY THEORY OF LIABILITY AND WHETHER YOU HAVE BEEN ADVISED

OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL SWORD BE LIABLE FOR ANY DAMAGES CAUSED BY YOUR OR ANY THIRD PARTY'S ACTS OR OMISSIONS.

You acknowledge and agree that payment by SWORD or retention by you of direct damages, as limited above, is your sole and exclusive remedy in exhaustion of all other remedies, at law or in equity, and that such remedy has not failed of its essential purpose. Any claims against SWORD in connection with your use of the Sites or the Services must be brought against SWORD within one (1) year of the date of the event giving rise to such action. When using the Sites and Services, information will be transmitted over a medium which may be beyond the control and jurisdiction of SWORD, its customers and/or vendors. Accordingly, SWORD assumes no liability for or relating to the delay, failure, interruption or corruption of any data or other information transmitted in connection with use of the Sites or the Services. Some jurisdictions do not allow the exclusion of certain warranties or the limitation or exclusion of liability for incidental or consequential damages. Accordingly, the above disclaimers and limitations may not apply to you if you reside in such a jurisdiction and the duration and scope of such disclaimers and limitations will be the minimum permitted under applicable law. You may also have other legal rights that vary from jurisdiction to jurisdiction.

## **Indemnification**

You agree to indemnify, defend and hold harmless SWORD, our shareholders, affiliates, directors, managers or, employees or customers from and against any claims, actions or demands, liabilities and settlements including, without limitation, reasonable legal and accounting fees and other expenses, that arise directly or indirectly out of or from your violation of these Terms of Use or your activities in connection with the Sites or Services. You agree to cooperate as reasonably required in the defense of any such claim. SWORD reserves the right to assume the exclusive defense and control of any matter otherwise subject to indemnification under this section and, in any event, you agree not to settle any such matter without the prior written consent of SWORD.



## Disclosures

All Professionals performing licensed clinical services through the Services hold the professional licenses issued by the professional licensing boards or agencies in the states where they practice. You can report a complaint relating to the care provided by a SWORD Health Professional by contacting the professional licensing board in the state where the care was received. In a professional relationship, sexual intimacy is never appropriate and should be reported to the board or agency that licenses, registers, or certifies the licensee.

You can find the contact information for each of the state professional licensing boards governing physical therapy on The Federation of State Boards of Physical Therapy at <https://www.fsbpt.org/Free-Resources/Licensing-Authorities-Contact-Information>.

Any clinical records created as a result of your use of the Services will be securely maintained by SWORD on behalf of SWORD Health Professionals for a period that is no less than the minimum number of years such records are required to be maintained under state and federal law, which is typically at least six years.

## Website Links

WE WILL NOT BE LIABLE FOR ANY INFORMATION, SOFTWARE, OR LINKS FOUND AT ANY OTHER WEBSITE, INTERNET LOCATION, OR SOURCE OF INFORMATION, NOR FOR YOUR USE OF SUCH INFORMATION, SOFTWARE OR LINKS, NOR FOR THE ACTS OR OMISSIONS OF ANY SUCH WEBSITES OR THEIR RESPECTIVE OPERATORS.

## Ownership

The Sites and its entire contents, features and functionality (including but not limited to all information, software, text, displays, images, video and audio, and the design, selection and arrangement thereof), are owned by SWORD, its licensors or other providers of such material and are protected by United States and international copyright, trademark, patent, trade secret and other intellectual property or

proprietary rights laws. These Terms of Use permit you to use the Site for your personal, non-commercial use only.

## Privacy and Communications

SWORD is required to comply with federal healthcare privacy and security laws and maintain safeguards to protect the security of your health information. Additionally, the information you provide to your Professional during a consultation is confidential, except for certain legal exceptions as more fully described in our Privacy Notice. We devote considerable effort toward protecting your personal information. Information regarding our use of health and other personal information is provided in our Privacy Notice and Corporate Privacy Policy.

As part of providing you with the Services, we may need to provide you with certain communications such as appointment reminders, service announcements, privacy notices, administrative messages and other communications about the Services ("**Communications**"). These Communications are considered part of the Services.

You agree that we may send to you Communications through electronic means including but not limited to: (1) by email, using the address that you provided to us during registration, (2) short messaging service ("**SMS**") text message to the mobile number you provided us during registration ("**SMS Messages**"), (3) push notifications on your tablet or mobile device, or (4) by posting Communications on the Sites. The delivery of any Communications from us is effective when sent by us, regardless of whether you read the Communication. You can withdraw your consent to receive Communications by contacting us at [help@swordhealth.com](mailto:help@swordhealth.com). Please be aware that SWORD cannot guarantee the security or confidentiality of messages sent by email. Information relating to your care, including clinical notes and records, are stored on encrypted servers.

### SMS Messages Terms and Conditions

The number of SMS Messages we send as part of our Communications will depend on the frequency of your use of the Services. You can stop receiving SMS Messages at any time by texting "**STOP**" to 91892. If you send the message "**STOP**" to us, we will send you a reply message to confirm that you

have been unsubscribed from SMS Messages. After this, you will no longer receive SMS Messages from us. If you text "**HELP**" to us, we will reply with instructions on how to receive SMS Messages as well as how to unsubscribe from SMS Messages.

### **Participating Carriers**

AT&T, Verizon Wireless, Sprint, T-Mobile, U.S. Cellular, Boost Mobile, MetroPCS, Virgin Mobile, Alaska Communications Systems (ACS), Appalachian Wireless (EKN), Bluegrass Cellular, Cellular One of East Central, IL (ECIT), Cellular One of Northeast Pennsylvania, Cricket, Coral Wireless (Mobi PCS), COX, Cross, Element Mobile (Flat Wireless), Epic Touch (Elkhart Telephone), GCI, Golden State, Hawkeye (Chat Mobility), Hawkeye (NW Missouri), Illinois Valley Cellular, Inland Cellular, iWireless (Iowa Wireless), Keystone Wireless (Immix Wireless/PC Man), Mosaic (Consolidated or CTC Telecom), Nex-Tech Wireless, NTelos, Panhandle Communications, Pioneer, Plateau (Texas RSA 3 Ltd), Revol, RINA, Symmetry (TMP Corporation), Thumb Cellular, Union Wireless, United Wireless, Viaero Wireless, and West Central (WCC or 5 Star Wireless).

Carriers are not liable for delayed or undelivered messages.

Message and data rates may apply for any messages sent to you from us and to us from you. If you have any questions about your text plan or data plan, we suggest you contact your wireless provider.

## **Miscellaneous.**

1. **Third Party Links:** The Sites and Services may include links to third party websites which may include opinions, information or recommendations by third parties. In providing such links, we do not represent to you that we have investigated the content of such third-party websites. SWORD does not warrant or guarantee the accuracy of any content included on third party websites nor do we endorse, credential or accredit any opinions, recommendations or information included on such third -party websites. These Terms of Use do not apply to your use of such third-party websites, and

your use of third-party websites is subject to the terms and conditions of use for such websites and at your own risk.

2. **Data Charges and Mobile Phones:** You are responsible for any internet or mobile charges that you may incur for using our Sites and Services, including data charges. If you are unsure what those charges may be, you should ask your service provider before using our Sites and Services.
3. **Third Party Rights:** The indemnification, consents provided, and the general legal provisions under this Terms of Use are for the benefit of the SWORD our affiliates, and third-parties that provide data, software, content, and other services to us. Each of these individuals or entities shall have the right to assert and enforce those provisions directly against you on its own behalf.
4. **Entire Agreement:** Except as expressly provided in the other policies on the Sites, these Terms of Use constitute the entire agreement between you and SWORD with respect to your use of the Sites and Services. You acknowledge that the provisions, disclosures and disclaimers set forth in these Terms of Use are fair and reasonable and your agreement to follow and be bound by them is not the result of fraud, duress or undue influence exercised upon you by any person or entity. If you have any concerns or questions regarding the Sites, Services or updates to these Terms of Use, please contact us at [help@swordhealth.com](mailto:help@swordhealth.com).
5. **Legal Compliance:** You represent and warrant that you are not: (a) located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a “terrorist supporting” country; and (b) listed on any U.S. Government list of prohibited or restricted parties, including, but not limited to, the Specially Designated Nationals List. The Sites may not be downloaded or otherwise exported or re-exported: (i) into (or to a national or resident of) any country that is subject to a U.S. Government embargo or has been designated by the U.S. Government as a “terrorist supporting” country; or (ii) to anyone on the U.S. Treasury Department’s list of Specially Designated Nationals or the U.S. Commerce Department’s Table of Deny Orders. By downloading or using the Sites or the Services, you agree to the foregoing and represent and warrant that you: (a) are not located in, under the control of, or a national or resident of any such country or on any such list; (b)

are not listed on any U.S. Government list of prohibited or restricted parties; and (c) agree to comply with all export laws and other applicable laws.

6. **No Waiver:** Our failure to exercise or enforce any right or provision does not constitute a waiver of such right or provision. No waiver of any provision shall be deemed a further or continuing waiver of such term or condition or any other term or condition.
7. **Severability:** If any provision is found by a court of competent jurisdiction to be invalid, the you and SWORD agree that the court should endeavor to give effect to the parties intentions as reflected in the provision, and the other provisions of the Terms of Use remain in full force and effect.
8. **Course of Conduct:** Neither the course of conduct between you and SWORD nor trade practice shall act to modify any provision of these Terms of Use.
9. **Assignment:** SWORD may assign our rights and duties under these Terms of Use to any party at any time without notice to you and/or your approval.
10. **Geographical Restrictions:** SWORD is based in the State of Utah in the United States of America. The Sites and the Services are available in the United States and Portugal. SWORD makes no claims that the content of the Sites or the use of Services is appropriate outside of the United States or Portugal. Access to the Content of the Sites and the Services may not be legal by certain persons or in certain countries. If you access the Sites or Services from outside the United States or Portugal, you do so at your own risk.
11. **Force Majeure:** SWORD will not be deemed to be in breach of these Terms or liable for any breach of these Terms or our Privacy Notice or Corporate Privacy Policy due to any event or occurrence beyond our reasonable control, including without limitation, acts of God, an epidemic or pandemic, terrorism, war, invasion, failures of any public networks, electrical shortages, earthquakes or floods, civil disorder, strikes, fire, or other disaster.
12. **DMCA:** The Digital Millennium Copyright Act of 1998 (the "**DMCA**") provides recourse for copyright owners who believe that material appearing on the Internet infringes their rights under U.S. copyright law. If you believe in good faith that materials appearing on the Sites infringe your copyright, you (or your agent) may send us a notice requesting that the material be removed, or access to it blocked. In addition, if you believe in good faith that a notice of copyright infringement has been wrongly filed against you, the DMCA

permits you to send us a counter-notice. Notices and counter-notices must meet statutory requirements imposed by the DMCA. One place to find more information is the U.S. Copyright Office Website, currently located at <https://www.loc.gov/copyright>. In accordance with the DMCA, SWORD has designated an agent to receive notification of alleged copyright infringement in accordance with the DMCA. Any written Notification of Claimed infringement should comply with Title 17, United States Code, Section 512(c)(3)(A) and should be provided in writing to SWORD Health, Inc., 65 East Wadsworth Park Drive Suite 230, Draper, UT 84020.

Please send any questions or report any violations of these Terms of Use to [help@swordhealth.com](mailto:help@swordhealth.com).

## Contact us

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