

# MEMBER Terms & Conditions of Use

Welcome to Smart Choice Medical Group/Smart Health OC clinic! As a member, you (“**Member**,” “**you**”) may have access to our mental health platform to facilitate your connection with mental health practitioners.

Smart Choice Medical Group/smarthealthoc (“**Smart Choice Medical Group/smarthealthoc**”), a California professional corporation, through its medical director, and Smart Choice Medical Group/smarthealthoc (“**Smart Choice Medical Group/smarthealthoc**”), a Texas corporation, (collectively, “**Smart Choice Medical Group Health**,” “**we**,” “**us**,” “**our**”) have entered a certain management services agreement.

**Who is Smart Choice Medical Group/smarthealthoc?** Smart Choice Medical Group/smarthealthoc provides management and related services to Smart Choice Medical Group/smarthealthoc to ensure our members’ experience with Smart Choice Medical Group/smarthealthoc runs smoothly. All of Smart Choice Medical Group/smarthealthoc services are non-medical and include, for example, intake assistance, scheduling assistance, software services, site maintenance, and technological support.

**Who is Smart Choice Medical Group/smarthealthoc?** Smart Choice Medical Group/smarthealthoc and its licensed practitioners provide Members, who are eligible and provide consent, Medical Services, as described below. Smart Choice Medical Group/smarthealthoc alone controls and supervises the Medical Services and clinical decisions reached by Practitioners during sessions with Members.

**What is this agreement?** Please read these Member Terms and Conditions of Use (“**Conditions of Use**”) carefully, as they set forth the terms and conditions of your use of Smart Choice Medical Group/smarthealthoc platforms and mobile software applications, including but not limited to Smart Choice Medical Group/smarthealthoc and the Smart Choice Medical Group/smarthealthoc application (“**Sites**”) when engaging with Smart Choice Medical Group/smarthealthoc and its practitioners. Smart Choice Medical Group/smarthealthoc owns and maintains the Sites.

These Conditions of Use constitute a legal document. As a condition of being a Member, you must agree to be bound by these Conditions of Use. These Conditions of Use apply to members who register an account and use the Sites to obtain mental health care and related services. All Members are indirect users of the Sites, which means they will have access to the Sites’ programming interface to enable them to connect with licensed physicians and mental health care providers who are trained to provide services via remote modalities (“**Practitioners**”). Members who are eligible and render informed consent may be treated for ADHD, acute stress, anxiety, chronic fatigue, depression, insomnia, phobia treatment, post-traumatic stress disorder, weight loss needs, obsessive-compulsive disorder, and related conditions (“**Medical Services**”).

**Medical Services are not emergency services. If you experience a medical emergency (including suicidal or homicidal thoughts), you should immediately call 911 or visit your nearest emergency room**

We may alter these Conditions of Use without notice, and the Member’s continued use of the Sites signifies an agreement to be bound by any future changes. You are encouraged to review these Conditions of Use at regular intervals to monitor updates. If you do not agree, you should not register an account on our Sites. Please read these Conditions of Use carefully.

**Smart Choice Medical Group/smarthealthoc ARE NOT BASED ON A PERCENTAGE OF PROFESSIONAL FEES RENDERED BY Smart Choice Medical Group/smarthealthoc OR THE VOLUME OR VALUE OF Smart Choice Medical Group/smarthealthoc SERVICES.**

**SECTIONS 19, 20, 21, AND 26 LIMIT Smart Choice Medical Group/smarthealthoc LIABILITY. PLEASE READ THEM CAREFULLY.**

# **1. Acceptance and Agreement to Be Bound**

(a) These Conditions of Use forms a legally binding contract between you and Smart Choice Medical Group/smarthealthoc for your access to and use of the Registration (defined in Section 7(b) and the Medical Services. You represent and warrant that you have the right and authority to bind yourself to these Conditions of Use. You also represent and warrant that you are either: (i) at least 18 years of age or (ii) are the legal guardian of a child between the ages of 13 and 17 whom you are authorizing to use our Sites. You further represent and warrant that you agree that all information you submit to Smart Choice Medical Group/smarthealthoc is true and accurate.

(b) By using the Sites, you agree to allow Smart Choice Medical Group/smarthealthoc to collect, use, and disclose your information in order to receive Medical Services. All Practitioners of Smart Choice Medical Group/smarthealthoc require Members to sign consent forms prior to Members' first appointment. These Conditions of Use are binding upon signing.

(c) Members may only use the Sites if they can form a binding contract with us, and only if the Member agrees to comply with these Member Terms and Conditions of Use and all applicable local, state, national, and international laws, rules, and regulations.

# **2. The Sites Are Not Intended for Children**

(a) The Sites and Registration are not intended or designed to attract children under the age of 18. Smart Choice Medical Group/smarthealthoc does not collect personally identifiable information from any person known by Smart Choice Medical Group/smarthealthoc to be a child under the age of 18. Should we inadvertently come to possess personally identifiable information about a child under the age of 18, Smart Choice Medical Group/smarthealthoc will not knowingly disclose contact information relating to a child under the age of 18 to any third-party.

# **3. Creating an Account**

(a) To access some of the Content, as defined in Section 9(a), and the Medical Services, you must create a password-protected account ("Registration"). In doing so, you agree to supply truthful and complete information about yourself and update your Registration if it changes. You are responsible for keeping your password and username confidential and secure. You accept responsibility for all activities that occur under your username and with your password. You further agree to sign out of your account after each session and use caution when accessing your account from a public or shared computer. Smart Choice Medical Group/smarthealthoc not responsible for any loss or damage that arises due to your failure to maintain the security of your account.

(b) Creating an account will allow you access to the Medical Services. You may be asked to provide your insurance information, if applicable to you, and your provision of Personal Health Information ("PHI"). Your provision of PHI is voluntary. If you have health insurance, your insurance may cover

Smart Choice Medical Group/smarthealthoc to submit claims and bill Medical Services to your insurer on your behalf to process payments and reimbursements. Please note that it is your responsibility to know your benefits, including any applicable co-payments, co-insurance, deductibles, out-of-network limits, prior authorization requirements or any other limit to your health insurance benefit. We encourage you to contact your insurer if you have questions about coverage for Medical Services. You are ultimately responsible for payment of all fees arising out of your membership. Please inform us immediately if your health insurance coverage changes.

(c) Registration for Members is subject to the Smart Choice Medical Group/smarthealthoc eligibility requirements. To be eligible to receive the Medical Services, you are required to provide a valid identification card and use of a web cam to confirm your identity.

(d) Payment is required for Medical Services and your membership. You will be prompted to provide your payment information upon Registration. You agree to update your payment information if there are any changes to it. All necessary fees will be detailed on the Sites. Smart Choice Medical Group/smarthealthoc bills you through an online account. You agree to pay Smart Choice Medical Group/smarthealthoc for all charges then in effect at the time of receiving Medical Services. If payment is not provided within the time period specified to you, you are obligated to pay your full account balance immediately. Charges include but are not limited to cancellation fees, no-show fees, and rescheduling fees.

(e) All payments provided by Members can be made through a credit card using a third-party vendor integrated into Smart Choice Medical Group/smarthealthoc ("Payment Processor"). Payment processing services for all fees incurred as a result of your membership are subject to a Payment Processor's third-party terms of service. By agreement to these terms of service or continuing your membership, you agree to be bound by the Payment Processor terms of service, as modified from time to time with or without notice. As a condition of Smart Choice Medical Group/smarthealthoc enabling payment processing services through the Payment Processor, you agree to provide accurate and complete payment information and you authorize us to share it and other transaction information related to your use of payment processing services by the Payment Processor for the sole purpose of processing payments.

(f) By providing payment information to us, you grant the Payment Processor and us your consent and authorization for your credit card to be charged for any fee for your continued membership. All overdraft, chargebacks, and bank fees are solely your responsibility. We will notify you in advance of fee increases prior to you being billed. We do not offer refunds.

(g) BY REGISTERING AS A MEMBER, YOU AGREE TO PAY ANY FEES ASSOCIATED WITH YOUR MEMBERSHIP. THE FEE WILL AUTOMATICALLY BE CHARGED TO YOUR PREFERRED PAYMENT METHOD. YOU AGREE THAT THE FEES WILL INCLUDE APPLICABLE TAXES UNTIL YOU CANCEL YOUR REGISTRATION. IF YOUR PAYMENT METHOD FAILS AND YOU DO NOT PAY OR DO NOT PAY ON TIME, WE MAY CANCEL OR SUSPEND YOUR ACCOUNT.

(h) Any fee are exclusive of value-added, goods and devices, sales, or other tax. You are solely responsible for such payment and compliance with such tax obligations.

(i) After you complete your Registration and consent to the care, you will be connected to Practitioners to receive Medical Services.

## **4. Account Registration and Security**

(a) The Sites are not for or directed to anyone under 18 years of age. By providing information about yourself, you warrant that you are either: (i) at least 18 years of age and can form a binding contract or (ii) are the legal guardian of a child between the ages of 13 and 17 whom you are authorizing to use our Sites.

(b) If you are the legal guardian for a minor whom you are authorizing to use the Sites, you must agree to these terms to form a binding contract. If you provide any untruthful or incomplete information, or if Smart Choice Medical Group/smarthealthoc reasonably suspects such, Smart Health OC may suspend or terminate your account and Registration and refuse your future use of the Content or the Medical Services.

(c) You are solely responsible for your own account activity and agree to maintain your own secure password and not use anyone other person's password or login credentials. You further agree not to share or sell your password or login, and to notify us if you suspect unauthorized use of your account.

(d) Corporate entities are not eligible for Registration or membership. Medical Services and Content are for personal use only and shall not be used for commercial endeavors unless expressly consented to in writing by Smart Health OC.

(e) If you no longer wish to be a Member, please notify us in writing by sending a letter to 4200 Latham Street, Suite A, Riverside, California 92501 with attention directed to Privacy Officer or emailing us at [privacy@smarthealthoc.com](mailto:privacy@smarthealthoc.com).

(f) Please immediately alert Smart Health OC to any unauthorized use of your account, password, username, email, or other breaches of security at [privacy@smarthealthoc.com](mailto:privacy@smarthealthoc.com) or contact us at 657-218-4145. You will be connected to our Customer Support Manager for assistance.

## 5. Health Insurance Portability and Accountability (“HIPAA”) Notice

(a) Smart Health OC respects the privacy of your PHI and makes every effort to keep Member information secure. The law requires us to maintain the privacy and security of your protected health information. This includes maintaining reasonable and appropriate administrative, technical, and physical safeguards to protect the unauthorized use or disclosure of your protected information. We will alert you promptly if a breach occurs that may have compromised the privacy or security of your information. (b) Smart Health OC is a business associate of Smart Choice Medical Group as such term is defined under HIPAA. (c) We will mitigate, to the extent practicable, any harmful effect we learn was caused by a breach of privacy. We must comply with the duties and privacy practices described in this notice, and we must offer you a copy of this document. We will not use or share your information, other than as described here, without your express written permission. If you authorize a use or disclosure of your information, you may revoke that authorization in writing at any time. *For more information, visit HHS' website at [hhs.gov](http://hhs.gov).* (d) To receive a copy of this agreement, please email [admin@smarthealthoc.com](mailto:admin@smarthealthoc.com) or request this by sending a letter to 4200 Latham Street, Suite A, Riverside, California 92501 with attention directed to Privacy Officer. (e) Members should always exercise caution when disclosing their PHI via email or other unsecured methods with Practitioners.

## 6. Prohibited Countries

(a) The Medical Services provided are not available to Members who live in countries that are prohibited by law, regulation, treaty, or administrative act from entering into trade relations with the United States.

## 7. Medical Services

(a) All concerns about your condition, diagnosis, care plan, or treatment should be directed to your Practitioner.

(b) You may withdraw your consent at any time for Medical Services by alerting your Practitioner. You are not eligible to receive Medical Services until after you register and provide your informed consent for services.

(c) Smart Health OC is not a pharmacy. You agree to use prescriptions obtained from Practitioners for their intended and prescribed use. Requests for prescriptions are subject to the clinical judgment of the Practitioner and may be refused if medically necessary.

(d) By receiving the Medical Services, you represent and warrant that you will be physically located in a state where Smart Health OC operates and will not submit any claims for reimbursement to any federal program, including but not limited to Medicare or Medicaid.

## 8. Independence of Practitioners

(a) The advice of any Practitioner to Members is independently and exclusively the advice of the Practitioner. Any information or opinion expressed by any Practitioner listed on the Sites is independently and exclusively the information or opinion of the Practitioner. Smart Health OC does not endorse any advice, opinion, course of treatment, products, medications, devices, or additional information that a Practitioner on the Sites may give or recommend.

(b) All Practitioners featured on the Sites are independent contractors of Smart Health OC. The Practitioners are independently insured, and any issue, warranty, or claim by a Member must be directly addressed to the respective Practitioner.

(d) The Sites do not provide or render Medical Services. The Sites are digital platforms to connect members seeking Medical Services with Practitioners who offer such Medical Services and other educational tools and information. Smart Health OC is a conduit between Members and Practitioners.

(e) A Practitioner's training, education, and experience determine the specific area of Medical Services that the Practitioner is qualified to provide. The Medical Services are licensed services. Practitioners have specialized training in certain areas of mental health consistent with Smart Health OC's policies, procedures, and obligations to third parties. The Practitioners alone are solely responsible for providing Medical Services in a way that is compliant with all Federal, State, and local laws.

## 9. Only Licensed Practitioners Provide Medical Advice

(a) The Sites provide content for informational and educational purposes only. This includes the entirety of the Sites (including text, images, videos, and blogs), social media, and any information obtained from Smart Health OC's licensors or third parties, and the logos, images, software, videos, text, graphics, photos, sounds, music, audiovisual combinations, interactive features, collections and other materials you may view on, access through, or contribute to the Medical Services. This information is collectively referred to as the Sites' "**Content**." The availability of Content to Members does not create a patient-provider relationship. Content does not include professional advice, including medical advice, provided by Practitioners to Members nor does it include information on third-party sites. Content is subject to revision at any time. Additionally, the views and opinions expressed in the Content do not necessarily reflect the official policy or position of Smart Health OC..

(b) Practitioners are solely responsible for ensuring that Medical Services do not constitute the unlicensed practice of a licensed service in any jurisdiction in which Smart Health OC operates.

(c) Practitioners alone determine whether a Member is eligible for Medical Services. It is up to the Member to determine whether using the Sites is an appropriate modality for your circumstances. Your Practitioner can help you make this determination.

(d) If you have concerns about any medical condition, diagnosis, or treatment, you should personally consult with your Practitioner or other provider.

## 10. Conduct

(a) You expressly agree not to deceive, harass, stalk, harm, or exploit any other members; distribute spam; collect or record information about other members; or advertise or solicit others to purchase any product or service on the Sites or on any other Smart Health OC product or service. Smart Health OC reserves the right but does not have an obligation to monitor all conduct on the Sites.

(b) Smart Health OC may, in its sole discretion, investigate and terminate your membership for any violation of these Conditions of Use. You agree to cooperate fully in any such investigation. Termination of membership is immediate upon Smart Health OC's findings of the following non-exhaustive list: you made a statement that implies an endorsement of Smart Health OC without its written consent; you used a robot, spider, or other manual or automatic device or process to retrieve, index, "data min," or in any way reproduce or circumvent the navigational structure or presentation of Content; you posted, distributed, removed, or reproduced copyrighted material, trademarks, or other proprietary information without obtaining advanced written consent; you interfered with or disrupted the Sites, Content, or Medical Services, or the servers or networks that provide such Sites, Content, or Medical Services; you transmitted material that contains software viruses or other code, files, or programs designed to interrupt, destroy, or limit the functionality of the Sites, Content, Medical Services, hardware, software, or telecommunications equipment; you manipulated Content to disguise the origin of information; you used meta tags, codes, or other devices containing reference to Content, Sites, or Medical Services to direct persons to another website; or you modified, adapted, sublicensed, translated, sold, reverse engineered, deciphered, decompiled, or otherwise disassembled, or conspired to do so or enabled others to do so, to any portion of the Sites, Content, or Medical Services.

(c) After termination of your membership, whether voluntarily or by us, you agree that you will not attempt to use Sites, Content, or Medical Services under another name, real or assumed, and further agree that if you violate this restriction after being terminated, or if you violate any of these Conditions of Use during your membership, you will, to the fullest extent permitted by law, indemnify and hold Smart Health OC Health harmless from any liability it may incur as a result of such violation.

## 11. License Grant and Permitted Use

(a) Unless otherwise expressly stated, Smart Health OC or its licensors or affiliates owns the Sites and Content. The United States, worldwide copyright laws, and treaty provisions protect the Site. To access the Sites, you must reside in the United States or one of its territories.

(b) So long as you comply with these Conditions of Use, and subject to the Conditions of Use, Smart Health OC hereby grants you a limited, personal, non-exclusive and non-transferable license to use the Sites for as long as your Registration remains active (collectively referred to as "License Grant").

## 12. Acceptable Use

(a) You acknowledge and agree that Smart Health OC (i) is the exclusive owner (or has the rights of an owner) of all worldwide right to, title to, and interest in the Site, regardless of the format in which it is expressed; and (ii) shall be the exclusive owner of all worldwide right to, title to, and interest in any and all modifications, customization, variations, or adaptations of the Sites based on or substantially similar to the Site.

(b) You shall use reasonable means to ensure, through proper instructions and enforcement actions, that access to and use of the Sites by you will be in accordance with the terms of these Conditions of Use and will be made and used solely for proper and legal purposes and will be conducted in a manner that does not violate any law, rule or regulation, or the rights of any third party.

(c) Comments on the Sites are the sole responsibility of the writer. We reserve the right to remove any comment that violates these Conditions of Use.

(d) Use of the Sites is subject to all terms and conditions of these Conditions of Use, including Smart Health OC acceptable use policies. You shall not (i) use, permit the use of, or permit access the Sites except in accordance with the terms of these Conditions of Use; (ii) modify, translate, reverse engineer, decompile, disassemble, or attempt to derive or alter any source code of the Site; (iii) engage in, permit or suffer to continue any unauthorized copying of the Site; (iv) distribute, sublicense, sell, assign, transfer, rent, lease, pledge, encumber, disclose to any unauthorized third party, or otherwise allow any unauthorized third party to view, the Site, or make any attempt to do so; (v) alter, remove, obscure or hinder the delivery of any copyright, disclaimer, or proprietary or intellectual property rights notices appearing in the Site; (vi) take any action compromising, or that has the possibility of compromising, the enjoyment and use the Sites by any other member; or (vii) take any action compromising, or that has the potential of compromising, Smart Health OC Health's rights in the Site.

## 13. Consent to Electronic Communications

(a) By providing Smart Health OC with your email address, you consent to receive unencrypted an unsecured email communication from us. You agree that any notices, agreements, disclosures, or other communications that Smart Health OC provides to you by email satisfy any legal communication requirements.

(b) Any link sent to you for Medical Services should only be used by the Member for Medical Services and for non-commercial purposes. Public distribution of your link on sites where you are not the primary owner, including but not limited to Wikipedia or coupon websites is expressly prohibited. Promoting your referral link via search engine marketing, including but not limited to AdWords, Yahoo, or Bing, is also expressly prohibited. Smart Health OC may suspend your membership, registration, and account and revoke all referral credits if it was earned in violation of these terms.

(c) You may opt out of text (“SMS”) messaging at any time. To do so, text the word STOP from the mobile device registered with your account to receive messages. You understand that opting out of receiving SMS messages may impact your access to Sites, Content, and Medical Services.

## 14. Security and Privacy

(a) Smart Health OC utilizes encryption methods for Medical Services and Secure Sockets Layer (SSL) protocol for financial transactions.

(b) The Sites incorporates a mechanism for verifying the identity of Members by asking for a formal identification number, such as date of birth, driver’s license, or other satisfactory evidence. Though members may choose to utilize a username for participation on the Site, they must offer, at minimum, their full first and last name, home address, and a phone number to confirm identity. Any and all sensitive information stored in Smart Health OC database will be safe and protected by our platform. Smart Health OC cannot guarantee service will be uninterrupted, timely, or secure.

(c) Smart Health OC makes every effort to comply with all applicable laws that concern the privacy of online communications. By using the Site, however, you acknowledge that the Internet is neither more nor less secure than other communications media, including mail, facsimile, and telephone services, all of which can be intercepted and otherwise compromised.

(d) As a matter of prudence, you are urged to assume that all internet communications are not secure. To learn more about how Smart Health OC maintains the privacy and security of its members, please ask us.

(e) As a Member, you must exercise good judgment and caution in your use of the Medical Services. You are strictly prohibited from violating or attempting to violate the security of the Medical Services. Any violations may result in criminal, civil or other penalties against you. We may investigate any suspected violations and cooperate with law enforcement agencies in their investigations of such violations. You represent and warrant that you shall not engage in activities that may infringe on the security of the Medical Services.

## 15. Information You Provide

(a) Smart Health OC has the right, but not the duty, to monitor your use of the Site, including any information you provide. Any information you send to Smart Health OC by email may be misdirected or intercepted by unintended recipients, and thus it may not constitute a confidential medium of communication. If you have confidentiality concerns, please consider using an alternative mode of communication and do not transmit any sensitive or confidential information to us via email.

(b) The Sites provides you the option to communicate with Smart Health OC through email. This option is provided solely for your convenience, and it may not be secure. By using it, you agree that Smart Health OC is not responsible for the privacy of any email messages. Smart Health OC does not warrant the confidentiality or security of any email transmission.

(c) If you have questions about our Sites' privacy policy, please access our Privacy Policy located on our Sites, which is incorporated by reference into these Conditions of Use. We may use comments you choose to share about our Sites and Content for marketing purposes unless otherwise indicated. Any feedback you provide about your experience with Smart Health OC is voluntary and optional. You agree not to include PHI in any feedback provided to Smart Health OC. Under no circumstances will Smart Health OC disclose PHI for marketing purposes unless such disclosure is first consented to by you. Publications of comments will use your first name only.

(d) You are responsible for all information you send through the Site. This means that you agree not to transmit information that is illegal, threatening, libelous, defamatory, obscene, ethnically or racially offensive or discriminatory, profane, invades the privacy of another person, or any other information that violates any law or confidentiality agreement. Smart Health OC may edit, delete, modify, or ban such information, and take necessary legal action against any member for violation of this policy. Membership may be revoked at any time in the sole discretion of Smart Health OC.

## 16. Submissions of Information

(a) Do not send Smart Health OC any ideas, suggestions, materials, concepts, or other information (collectively "Information") on the Site. Information does not include information provided to Practitioners during Medical Sessions. If you violate this policy and do send Information to Smart Health OC, that Information will become the property of Smart Health OC. This means that Smart Health OC will have unrestricted use of it for its personal and commercial purposes. Smart Health OC will not compensate you and will not be liable to you or any other provider of the Information.

(b) If you send Information to Smart Health OC, you agree: (i) to waive your rights in any Information; (ii) to warrant that it is original to you; (iii) that you have the right to submit it to Smart Health OC; and (iv) that you have no recourse against Smart Health OC for any alleged or actual infringement or misappropriation of any proprietary right in any Information.

(c) Smart Health Smart Health OC disclaims any liability that may result from its disclosure of any Information submitted in violation of its policy.

(d) You further agree not to:

- Transmit any Information that contains any viruses or other computer programming routines that may damage, interfere with, intercept, or take any system, data, or personal information;
- Impose an unreasonably large amount of Information on the Sites or otherwise interfere with or inhibit any other member from using or enjoying the Site;
- Transmit any advertisements, solicitations, chain letters, pyramid schemes, investment opportunities, or other unsolicited commercial communications;
- Access, use, or copy any portion of the Sites using automated mechanisms, such as bots, spiders, scrapers, web crawlers, or indexing agents; and/or
- Impersonate another person or allow any other person or entity to use your identification for interacting on Smart Health OC's social media.

## 17. Intellectual Property

(a) Except as provided in the License Grant, you may not copy, reproduce, modify, use, republish, upload, post, transmit, or distribute any of the Site, including any trademarks, names, or logo, and you may not redeliver or present any of the pages, text, images, or the Content using "framing" technology, nor systematically retrieve data, information, or the Content to create a collection, compilation, database, or directory. Smart Health OC reserves all rights not expressly granted.

(b) Except as expressly set forth in these Conditions of Use, you shall not do any of the following: (i) modify, reformat, or translate the Content, (ii) license, sell, rent, lease, transfer, assign, distribute, offer, or otherwise commercially exploit the Content, or any portion thereof; (iii) use the Content in any manner that allows any person to access the Content other than as expressly provided for in these Conditions of Use; or (iv) continue to use any Content after the termination of these Conditions of Use.

## 18. Operation of the Site

(a) Smart Health OC all reasonable efforts to keep the Sites operational and available for access on a 24-hour-a-day, seven-day-a-week basis. This is occasionally subject to scheduled downtime for maintenance purposes, unscheduled maintenance, and systems outages. Notwithstanding such maintenance, the Sites offers 24/7 chat access to a care team.

(b) Smart Health OC, however, does not provide any assurance or warranty that: (i) access will always be available; (ii) Medical Services will be uninterrupted; (iii) its operation will be error-free; (iv) defects will be corrected; or (v) the servers that operate the Sites are free from viruses or other harmful components.

(c) You agree to assume the entire cost of all servicing, repair, or correction to your property arising from your use of the Sites or Content.

(d) Smart Health OC may change, modify, add, remove, suspend, cancel, or discontinue any of its Sites, including the functionality, Content, and availability of any of their features in its sole discretion at any time consistent with these Conditions of Use. Your continued use of the Sites, Content, and Medical Services after any such change, modification, addition, removal, suspension, cancellation, or discontinued service demonstrates your consent to them.

## 19. Limitation of Liability

(a) You assume the risk of participating in our Medical Services. You further acknowledge that Practitioners are independent contractors of Smart Health OC, and that Smart Health OC assumes no responsibility for any act or omission of any Practitioner. We encourage you to do your own research.

(b) You acknowledge that, though a Practitioner may be for Smart Health OC., Smart Health OC cannot predict or assess the utility or effectiveness of Medical Services rendered by a Practitioner for your particular circumstances.

(c) Under no circumstances will Smart Health OC, their employees, officers, directors, shareholders, or agents be held liable for any indirect, consequential, or punitive damages relative to the Medical Services provided by any of the Practitioner accessed through the Site. Notwithstanding anything in these Conditions of Use, Smart Health OC's total liability to you for any reason is limited to the amount paid, if any, by you to Smart Health OC during the term of your membership.

(d) ALL INFORMATION IN THE SITES AND CONTENT IS PROVIDED "AS IS." ACCORDINGLY, Smart Health OC MAKES NO REPRESENTATIONS, AND NO EXPRESS OR IMPLIED WARRANTIES OF ANY KIND, WITH RESPECT TO THE CONTENT, MEDICAL SERVICES, OR THE SITES OR ANY LINKED WEBSITE. TO THE FULL EXTENT PERMITTED BY LAW, Smart Health OC DISCLAIMS ALL WARRANTIES (EXPRESS OR IMPLIED), INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT. Smart Health OC GIVES NO WARRANTY AS TO THE ACCURACY, RELIABILITY, COMPLETENESS, CURRENTNESS, TIMELINESS, OR AVAILABILITY OF THE SITES, THE CONTENT, MEDICAL SERVICES, OR OF ANY LINKED WEBSITE.

(e) By using the Site, you signify that you assume the risk of accessing and using the Content. We do not guarantee the accuracy of the information provided on the Sites and are not responsible for any errors or omissions in the information provided.

(f) **Smart Health OC is not responsible for Members' damage or loss.** You agree that Smart Health OC is not responsible to you or others for any loss or damages that result from your use (or non-use) of the Sites or any linked third-party website. This loss or damage includes, but is not limited to, direct, indirect, special, consequential, compensatory damage, incidental damage, lost profits or data, damages to your computer resulting from viruses, loss of or damage to other property, claims of third parties, or copying or display of the Sites or its contents. Smart Health OC is not responsible, regardless of whether Smart Health OC has been advised or knew or should have known of the possibility of such damages or claims. Your sole and exclusive remedy against Smart Health OC is to stop using the Site.

## 20. No Warranty or Guarantee of Outcome

(a) Smart Health OC has made efforts to provide accurate Content about the Medical Services. But any testimonial or example on the Sites does not guarantee that you will receive similar results. Your results will depend on your background, effort, personal circumstances, and many other factors that are beyond the scope of the Site, the Content, or the Medical Services.

(b) Smart Health OC MAKES NO GUARANTEE AND NO WARRANTY THAT YOU WILL HAVE ANY SPECIFIC RESULT. FURTHER, Smart Health OC MAKES NO GUARANTEE AND NO WARRANTY THAT THE SITES WILL OPERATE UNINTERRUPTED AND ERROR-FREE.

## 21. Indemnification for Your Use of the Sites, Content, and Medical Services

(a) Neither Smart Health OC, nor any licensors, affiliates, subsidiaries or parent companies, nor any respective officers, directors, employees, or agents will be liable for any damages including, but not limited to, indirect; incidental; consequential; special; exemplary; or punitive damages. In no event shall Smart Health OC nor any licensors, affiliates, subsidiaries or parent companies, nor any respective officers, directors, employees or agents will be liable for any special, indirect, or consequential damages, or damages whatsoever resulting from loss of use or data, whether in an action of contract, negligence, or other tortious action, arising out of or in connection with the use of the Site. Your sole and exclusive remedy for dissatisfaction with Sites, Content, or Medical Services is to stop using the Sites and receiving Medical Services. Smart Health OC provides no indemnification of any kind. You may withdraw your consent to Medical Services at any time.

(b) By using the Sites, you agree to indemnify Smart Health OC from any suit or proceeding made or brought against Smart Health OC by a third-party for claims that relate to your use of any portion of the Site, the Content, or Medical Services, your failure to comply with applicable law, your breach of these Conditions of Use, or your breach of any representations and warranties provided to us.

## 22. Links to Third-Party Websites

(a) Smart Health OC may provide links to third-party websites. The Sites occasionally provides links to third-party websites. By clicking on these links, you agree that Smart Health OC is not responsible and does not control any information on these websites. Third-party websites are unrelated to, and not maintained by, Smart Health OC.

(b) By clicking on such links, you agree that Smart Health OC is not responsible for third-party websites' content, regardless of whether your access is provided by Smart Health OC or by another third-party. Smart Health OC does not warrant the accuracy, timeliness, or suitability of the content of any third-party website.

(c) By providing a link to a third-party website, Smart Health OC does not endorse the products or services of that linked website, nor does it endorse the third-party website's sponsoring organization. Your sole and exclusive remedy for claims arising from any such third-party products or services is against the third-party provider and not Smart Health OC.

(d) Third-party websites may provide links to Smart Health OC. Smart Health OC hereby grants third-party websites the limited right to link to its website. This limited license does not grant the right to "framing" of the Content or grant any other activity that could create a misimpression or confusion among members with respect to sponsorship or affiliation.

## 23. Affiliate Disclaimer

(a) Pursuant to the Federal Trade Commission's Guides Concerning the Use of Endorsements and Testimonials in Advertising, 16 C.F.R. Part 255 Sections 255.0 through 255.5, some of the links are affiliated links. This means that Smart Health OC may receive payment if you purchase products or services through such links. Smart Health OC only utilizes affiliate links for products or services that its principals have personally used and believe will add value to its visitors and members.

## 24. No Assignment

(a) The Conditions of Use, licenses, and Registrations may not be transferred or assigned by you but may be assigned by us without restriction.

## 25. Applicable Law and Enforcement of Conditions of Use

(a) The laws of the state of California, without giving effect to its principles of conflicts of law, govern all adversarial proceedings arising out of these Conditions of Use. If a website visitor or Member takes legal action against us relating to the Site's privacy policies, the federal and state privacy policies of Smart Health OC., or these Conditions of Use or relating to the visitor's or Member's interactions with or relationship to Smart Health OC Health relating to the Site, that visitor or Member agrees to file such action only in the state and federal courts located in California.

(b) By using the Sites, you agree that: (i) if any provision of these Conditions of Use is held to be unenforceable, then that provision will be modified to the minimum extent necessary to make it enforceable, unless that modification is not permitted by law, in which case that provision will be disregarded; (ii) that if an unenforceable provision is modified or disregarded in accordance with this paragraph, then the rest of these Conditions of Use will remain in effect as written; and (iii) that any unenforceable provision will remain as written in any circumstances other than those in which the provision is held to be unenforceable.

(c) No waiver of any of these Conditions of Use shall be effective unless it is in writing and signed by the authorized representatives of Smart Health OC. No such waiver shall be deemed a further or continuing waiver of such term or any other term or condition of use.

(d) These Conditions of Use constitute the entire agreement between you and Smart Health OC as it relates to your use of the Site. It does not create any relationship between you and Smart Health OC that is not contemplated in these policies.

## 26. Arbitration

(a) Arbitration offers a faster, less expensive, and more efficient method of resolving disputes than resorting to the court system. Smart Health OC has therefore adopted, and Member agrees to adopt, arbitration as its preferred means of resolving disputes arising out of or relating to these Conditions of Use or the subject matter of these Conditions of Use, or any breach of these

conditions of use, including any dispute regarding the scope of this clause. Such disputes will be resolved through arbitration administered by the American Health Lawyers Association (“AHLA”) Dispute Resolution Service and conducted under the AHLA Rules of Procedure for Arbitration. Judgment on the award may be entered and enforced in any court having jurisdiction. The arbitrator selected shall have the authority to grant the Member of **Smart Health OC** or both all remedies otherwise available by law. The parties understand they are waiving their right to a jury trial in favor of arbitration.

(b) This provision does not include any claims that Member cannot be required to arbitrate as a matter of law or any matters required to be brought before an administrative forum. These Conditions of Use do not preclude the Member from filing a claim or charge with a governmental administrative agency.

(c) This agreement to arbitrate disputes does not prohibit the Member or **Smart Health OC’s** right to seek equitable relief from a court, including but not limited to injunctive relief, pending the resolution of a dispute by arbitration.

## **27. No Third Party Beneficiaries**

(a) Except as otherwise expressly provided in the Conditions of Use, no person that is not a party to the Conditions of Use will be a third-party beneficiary of any rights or obligations or be entitled to enforce any rights or obligations.

## **28. Amendments and Modifications**

(a) **Smart Health OC** may amend, modify, or update these Conditions of Use, the Content, or the Medical Services at any time without prior notice. If you use the Sites after any changes, you agree to be bound by the changes. These Conditions of Use and consent forms for Medical Services reflect the sole agreement between the Members and **Smart Health OC**. These Conditions of Use may be electronically signed. Electronic signatures have the same force and effect as handwritten signatures.