

# Smart App Gallery Terms of Use

**Effective:** December 1<sup>st</sup> 2016

These terms and conditions (“**Terms of Use**”) are a contract between users (“**you**”) and The Children’s Hospital Corporation, doing business as Boston Children’s Hospital, an affiliate of Harvard Medical School (“**BCH**”, “**we**” or “**us**”) and apply to the website located at <https://apps.smarthealthit.org>, its content, and to any other webpages owned and operated by us that link back to these Terms of Use (collectively, the “**Services**”). The Services include the SMART App Gallery (the “**Gallery**”) which collects together in one place a directory of applications available for download or use on the desktop and mobile devices (the “**Apps**”) that can be used in connection with the care or general health or well-being of an individual. For each App in the Gallery, a profile of relevant information about that App is provided (the “**Profile**”). These Terms of Use govern your use of and access to the Services, and do *not* apply to the individual Apps that appear in the Gallery or to the websites or other digital properties that are associated with an App. Please see the terms and conditions associated with a respective App to understand that App’s policies.

Please read and review these Terms of Use carefully before accessing or using the Services. **By accessing or otherwise using the Services, you accept and agree to be bound by these Terms of Use.** If you do not agree to these Terms of Use, you may not access or use the Services.

## **Our Information**

The Services include a directory of various Apps in the Gallery through which doctors, clinicians, patients, academics and administrators may browse and learn more about a particular App and where the App can be purchased. While we hope you find the Services helpful, you should remember that the Services are offered for information purposes only and are not meant as a substitute for independent medical judgment or the advice of a qualified physician or healthcare professional. You acknowledge that the Services are not intended to provide medical advice or clinical services to patients, to verify or approve medical information or credentials provided by the Apps, or to make any medical referrals. We do not provide professional or medical advice or recommend any particular medical device or service, including recommendations or endorsements of any of the Apps, through the Services. If you choose to use information or recommendations made available by the Services you do so at your own risk and you should not rely on that information as professional medical advice or use it to replace any relationship with your physician or other qualified healthcare professional. You assume full responsibility for any communication with any individual you contact through one of the Apps. We do not verify the credentials of anyone associated with the Apps and the inclusion of an App in the Gallery is not an endorsement by BCH of any such App or the related healthcare information, services or professionals. Individuals with any type of medical condition are specifically cautioned to seek professional medical advice before beginning any sort of health treatment. For medical concerns, including decisions about medications and other treatments, you should always consult your physician or, in serious cases, seek immediate assistance from emergency personnel.

## **Modification of the Agreement**

We may revise these Terms of Use from time to time. Revised terms and conditions will apply to the access or use of the Services from the date of the publication of the revised Terms of Use on the website. Please check this page regularly to ensure that you are familiar with the current version of the Terms of Use. By your continued use of the Services after publication of revised Terms of Use, you accept and agree to the terms and conditions in the revised Terms of Use.

### **Acceptable Use**

You agree to only use the Services for the purposes for which they have been designed. You will comply with these Terms of Use and all applicable local, state, national, and international laws, rules, and regulations, and will not encourage or promote any activity that violates these Terms of Use.

### **Restrictions on Use**

By accessing or otherwise using the Services, you agree that you will not under any circumstances:

- use the Services for any unlawful purpose or for the promotion of illegal activities;
- attempt to interfere in any way with the Services' networks or network security, or attempt to use the Services to gain unauthorized access to any other computer system;
- interfere or attempt to interfere with the proper functioning of the Services;
- make any automated use of the Services, or take any action that we deem to impose or to potentially impose an unreasonable or disproportionately large load on our servers or network infrastructure;
- bypass any measures we take to restrict access to the Services or use any software, technology, or device to scrape, spider, or crawl the Services or harvest or manipulate data;
- use another user's account without permission; or
- publish or link to malicious content.

### **Proprietary Rights**

The Services are the exclusive property of and owned by BCH. The Services contain, and are protected by, copyrights, trademarks and other intellectual property rights owned by BCH or third parties that have licensed their materials or provided services to us. BCH reserves all of its intellectual property rights in the Services, and these Terms of Use do not grant you any right or license with respect to any such intellectual property. You agree not to sell, license, copy, reproduce, modify, republish, transmit, edit, adapt, create derivative works from, distribute or otherwise make unauthorized use of any such intellectual property from the Services without express written permission from BCH. You agree not to reverse-engineer, decompile, disassemble or otherwise attempt to extract or discover the source code of the Services or any

part thereof, except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation.

### **Privacy Policy**

Your privacy is important to us. You can learn how we handle your information when you use the Services by reading our Privacy Policy located at <https://apps.smarthealthit.org/documents/privacy.pdf>. We encourage you to become familiar with the Privacy Policy because by using the Services, you consent to the collection, use, disclosure and other handling of information consistent with that policy.

### **User Information**

In these Terms of Use, your “**User Information**” means any material that you submit to us through, or in relation to your use of the Services for whatever purpose. You agree that all User Information is accurate and that you will keep it current. You own your User Information and you hereby grant, and agree to grant, BCH an unrestricted, worldwide, irrevocable, non-exclusive, perpetual, fully-paid, royalty-free, transferrable license to access, view, display, reproduce, adapt, publish, translate, store, host, cache, maintain, modify, distribute, and otherwise use and exploit your User Information in any manner, provided that it is in accordance with the Privacy Policy. You also grant BCH the right to sub-license these rights through multiple tiers, and the right to bring an action for infringement of these rights.

### **Accounts, Passwords and Security**

Certain features of the Services may require you to open an account (including setting up a username and password). You acknowledge that you are entirely responsible for maintaining the confidentiality of the information you hold for your account, including your password, and for any and all activity that occurs under your account. You agree to notify BCH immediately of any unauthorized use of your account or password, or any other breach of security.

### **Third Party Content**

Much of the content on the Services, including each of the App Profiles in the Gallery, is produced by users, publishers, and other third parties and is not controlled by BCH. You acknowledge that such content, and the operation of each of the Apps, are the sole responsibility of the third party person or organization that created it and we assume no responsibility for any third-party content, information or App. Although BCH reserves the right to review all content and information related to an App that appears on the website and to remove any content, information or App Profile at BCH’s discretion, we do not necessarily review all or any of it. BCH does not take responsibility for any third party content provided through an App posted in connection with the Services. Access and use of third party content, including Apps and content made available through the Services, is solely at your own risk and BCH makes no warranties, express, statutory, or implied, with respect to such third party content or Apps. These Terms of Use do not govern your use of any App, site or service other than the Services. You should review applicable terms and policies of any linked App or site. To the maximum extent permitted by applicable law, we will not be liable for any content submitted, posted, linked to, shared or otherwise made available via the Services, including, but not limited to, any

inaccuracies, errors or omissions in any content, any intellectual property infringement with relation to the linked content, or any loss or damage of any kind incurred as a result of the use of any content linked in or otherwise made available via the Services.

### **Notice of Copyright Infringement**

The Digital Millennium Copyright Act of 1998 provides recourse for copyright owners who believe that material posted on Internet sites infringes their rights under U.S. copyright law. If you believe in good faith that items, information or other materials appearing on the website infringes your copyright, please send us a notice containing the following information:

- A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.
- Identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works are covered by a single notification, a representative list of such works.
- Identification of the material that is claimed to be infringing or to be the subject of infringing activities and that is to be removed or access to which is to be disabled, and information sufficient to permit us to locate the material.
- Contact information for the notifying party, including name, address, telephone number, and email address.
- A statement that you have a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law.
- A statement that the information in the notification is accurate, and under penalty of perjury, that you are authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.
- Please submit this notice to BCH at [public.affairs@childrens.harvard.edu](mailto:public.affairs@childrens.harvard.edu).

### **Representations and Warranties**

If you are listing an App Profile in connection with the Services, you represent and warrant the following:

- You are authorized by BCH to publish such App Profile to the Gallery.
- BCH is entitled to present the App Profile in the Gallery, and has no independent obligation to verify or confirm its accuracy or completeness, and users may rely on its accuracy.
- You have all right and authority to publish the App Profile and any information regarding the App to the Gallery.

### **Modification of the Services**

BCH reserves the right to make additions, deletions or changes to the Services. We may add or remove App Profiles, features or functionalities, and we may suspend or stop the Services

altogether at our sole discretion. We may take any of these actions at any time, and when we do, we may not provide you with any notice beforehand.

### **Disclaimers**

TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE SERVICES, ACCESS TO THE SERVICES, AND ALL RELATED CONTENT, SERVICES AND INFORMATION ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITHOUT ANY REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, OR ANY GUARANTY OR ASSURANCE THE SERVICES WILL BE AVAILABLE FOR USE OR THAT ALL INFORMATION, CONTENT, MATERIALS, PRODUCTS, FEATURES, FUNCTIONS OR OPERATIONS WILL BE AVAILABLE OR PERFORM AS DESCRIBED. BCH DOES NOT WARRANT THAT ANY PART OF THE SERVICES WILL OPERATE UNINTERRUPTED OR ERROR-FREE OR THAT DEFECTS WILL BE CORRECTED. YOU EXPRESSLY AGREE THAT YOUR USE OF THE SERVICES IS AT YOUR SOLE RISK.

BCH DOES NOT WARRANT THAT THE WEBSITE, APPS, INFORMATION, CONTENT, MATERIALS, PRODUCTS OR OTHER SERVICES INCLUDED ON OR OTHERWISE MADE AVAILABLE TO YOU THROUGH THE SERVICES OR ELECTRONIC COMMUNICATIONS SENT FROM THE WEBSITE ARE FREE OF VIRUSES, MALICIOUS CODE OR OTHER HARMFUL COMPONENTS. BCH WILL NOT BE LIABLE FOR ANY DAMAGES OF ANY KIND ARISING FROM THE USE OF THE SERVICES, OR FROM ANY INFORMATION CONTENT, MATERIALS, APPS, PRODUCTS OR OTHER SERVICES INCLUDED ON OR OTHERWISE MADE AVAILABLE TO YOU THROUGH THE WEBSITE, INCLUDING BUT NOT LIMITED TO DIRECT, INDIRECT, INCIDENTAL, PUNITIVE, AND CONSEQUENTIAL DAMAGES.

TO THE MAXIMUM EXTENT PERMITTED BY LAW, BCH EXPRESSLY DISCLAIMS ANY RESPONSIBILITY FOR THE ACCURACY, CONTENT, AVAILABILITY OF INFORMATION, PRODUCTS, SERVICES, PRIVACY OR SECURITY PRACTICES OR MERCHANDISE OR INFORMATION FOUND ON THIRD PARTY SITES OR APPS THAT LINK TO OR FROM THE SERVICES. BCH CANNOT BE HELD RESPONSIBLE FOR THE MATERIAL CONTAINED ON THIRD PARTY APPS OR SITES.

Without limiting the foregoing, we are not responsible or liable for the accuracy, usefulness, timeliness or availability of any information transmitted or made available via the Services, and are not responsible or liable for any error or omissions in that information. You understand, acknowledge and agree that you are assuming the entire risk as to the quality, accuracy, performance, timeliness, adequacy, completeness, correctness, authenticity, security and validity of any and all content, features and functions of the Services.

### **Limitation of Liability**

YOU ACKNOWLEDGE AND AGREE THAT YOU ASSUME FULL RESPONSIBILITY FOR YOUR USE OF THE SERVICES. TO THE MAXIMUM EXTENT PERMITTED BY LAW, UNDER NO CIRCUMSTANCES WILL BCH, ITS SUPPLIERS OR LICENSORS, ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, TRUSTEES, PARENT COMPANIES, SUBSIDIARIES OR AFFILIATES BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE OR INCIDENTAL DAMAGES OR LOST PROFITS, WHETHER FORESEEABLE OR UNFORESEEABLE, BASED ON CLAIMS ARISING OUT OF OR

RELATED TO THE SERVICES OR ANY APPS OR SERVICES PROVIDED ON OR IN CONNECTION WITH THE WEBSITE (INCLUDING, BUT NOT LIMITED TO, UNAUTHORIZED ACCESS, DAMAGE, OR THEFT OF YOUR DATA, CLAIMS FOR LOSS OF GOODWILL, CLAIMS FOR LOSS OF DATA, USE OF OR RELIANCE ON THE SERVICE, STOPPAGE OF OTHER WORK OR DAMAGE CAUSED TO EQUIPMENT OR PROGRAMS FROM ANY VIRUS OR OTHER HARMFUL APPLICATION), ARISING OUT OF BREACH OR FAILURE OF EXPRESS OR IMPLIED WARRANTY, BREACH OF CONTRACT, MISREPRESENTATION, NEGLIGENCE, STRICT LIABILITY IN TORT OR OTHERWISE. IN THE EVENT OF ANY PROBLEM WITH THE SERVICES, YOU AGREE THAT YOUR SOLE AND EXCLUSIVE REMEDY IS TO CEASE USING THE SERVICES. UNDER NO CIRCUMSTANCES SHALL BCH BE LIABLE IN ANY WAY FOR YOUR USE OF THE SERVICES, INCLUDING, BUT NOT LIMITED TO, ANY ERRORS OR OMISSIONS, ANY INFRINGEMENT OF THE INTELLECTUAL PROPERTY RIGHTS OR OTHER RIGHTS OF THIRD PARTIES, OR FOR ANY LOSS OR DAMAGE OF ANY KIND INCURRED AS A RESULT OF, OR RELATED TO, THE USE OF THE SERVICES. THE LIMITATIONS, EXCLUSIONS AND DISCLAIMERS SET FORTH IN THIS SECTION WILL NOT APPLY ONLY IF AND TO THE EXTENT THAT THE LAW OR A COURT OF COMPETENT JURISDICTION REQUIRES LIABILITY UNDER APPLICABLE LAW BEYOND AND DESPITE THESE LIMITATIONS, EXCLUSIONS AND DISCLAIMERS.

### **Indemnity**

To the maximum extent permitted by law, you agree to indemnify, defend and hold harmless BCH, its managing members, licensors, officers, directors, employees, agents, trustees, subsidiaries, parent companies and affiliates (the “**Indemnitees**”) from and against all third party complaints, charges, claims, losses, expenses, damages, costs, liabilities and expenses (including, but not limited to, reasonable attorneys’ fees) due to, arising out of, or relating in any way to: (a) your access to or use of the Services; (b) material you have posted as part of the Services; and (c) your breach of these Terms of Use, in each case unless caused by such Indemnitee’s misrepresentation, gross negligence, willful misconduct or fraud.

### **Choice of Law and Venue**

These Terms of Use are governed by Massachusetts law. Any action against BCH must be brought in Boston, Massachusetts. You agree that these Terms of Use are entered into between you and BCH in the Commonwealth of Massachusetts, United States of America and are performed within the Commonwealth of Massachusetts. You agree that These Terms of Use and any and all disputes, claims and controversies arising out of or relating to your use of the Services shall be governed and construed exclusively in accordance with the laws of the Commonwealth of Massachusetts, exclusive of its choice of law or conflict of laws provisions. In any claim or action by you directly or indirectly arising under these Terms of Use or related to the Services, you irrevocably agree to submit to the exclusive personal jurisdiction of the state or federal courts located in or serving Boston, Massachusetts. You waive any jurisdictional, venue or inconvenient forum objections to such court.

### **Severability**

If a portion of these Terms of Use is determined to be unlawful, void or unenforceable, it will not affect the enforceability of the remaining provisions and the remaining provisions will continue

in effect. If any unlawful and/or unenforceable provision would be lawful or unenforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the provision will continue in effect.

### **Termination**

These Terms of Use are effective unless and until terminated by either you or BCH. You may terminate these Terms of Use at any time, provided that you discontinue any further use of the Services. We also may terminate these Terms of Use, in our sole discretion, at any time and may do so immediately and without notice, and accordingly deny you access to the Services.

### **Final Terms**

These Terms of Use, together with the Privacy Policy, constitute the entire agreement between you and BCH in relation to your use of the Services.

### **Miscellaneous**

Headings used in these Terms of Use are for reference purposes only and in no way define or limit the scope of the section. The following provisions survive the expiration or termination of these Terms of Use: Proprietary Rights; User Information; Third Party Content; Limitation of Liability; Indemnity; Choice of Law and Venue; and Miscellaneous.

### **How to Contact Us**

If you have any questions or comments about these Terms of Use, you may contact us in the following ways:

#### **Mailing Address:**

Boston Children's Hospital  
300 Longwood Avenue  
Boston, MA 02115

#### **Email Address:**

Public Affairs ([public.affairs@childrens.harvard.edu](mailto:public.affairs@childrens.harvard.edu))

#### **Phone Number:**

617-355-6000