

## EpioneMD Terms of Use

Last Updated: May 28, 2021

These Terms of Use (“**Terms of Use**” or “**Terms**”) govern the use of the advanced care planning and serious illness support palliative care coaching services (the “**Services**”) that EpioneMD, LLC, (“**Epione**”, “**our**”, “**us**” or “**we**”) makes available to an individual user (“**you**” or “**your**”) via our website located at [www.epionemd.com](http://www.epionemd.com) (the “**Site**”).

THESE TERMS OF USE CONTAIN A BINDING ARBITRATION CLAUSE AND CLASS ACTION WAIVER THAT IMPACT YOUR RIGHTS ABOUT HOW TO RESOLVE DISPUTES.

In order to access or use the Services, you must (a) read and sign the Informed Consent to receive Services, (b) represent to us that you are at least the age of majority in the State in which you reside, and (c) consent to our collection, maintenance, use, disclosure, and processing of your Personal Information (defined below), in accordance with our Privacy Policy found at [www.epionemd.com](http://www.epionemd.com) and our use and disclosure of your health information in accordance with our Notice of HIPAA Privacy Practices found at [www.epionemd.com](http://www.epionemd.com).

IF YOU DID NOT SIGN THE INFORMED CONSENT, THEN YOU MAY NOT USE THE SERVICES. If you signed the Informed Consent, but later decide that you want to terminate your account, please contact us at [ashwini.bapat@epionemd.com](mailto:ashwini.bapat@epionemd.com), and we will verify and complete your request.

### 1. About the Services

We deliver the Services through the Site. These Services may include, without limitation:

- Access to information, text, graphics, photos, resources, or other materials appearing on the Site, or in any aspect of the Services (the “**Content**”), including Content relevant to palliative care for you or a family or friend;
- The ability to interact with our health coaches and share relevant interactions with your healthcare provider;
- The ability to request your health information to share with our health coaches as necessary for you or your loved one to receive the Services; and
- Access to other information about us and our products and services through the Site and any other features, content, or applications that we may offer from time to time.

We make certain features available only to users who register for the Services and only for the duration of their access to and use of the Services. We reserve the right to change, suspend, or discontinue the Services at any time and for any reason at our discretion.

### 2. Your Account and Use of the Services

2.1. Registration and Enrollment. The Services are available only to individuals who: (i) are at least the age of majority in the State in which you reside and (ii) complete the registration process that we prescribe.

As a condition to receiving the Services, you will be required to register with us. You represent and warrant that all information that you submit to us is complete, accurate, and truthful. If you allow a third party to assist you in providing any information to us, including in registering or applying for the Services, you represent and warrant that you have reviewed that information and confirmed that it is complete, accurate, and truthful prior to its submission. You also agree to maintain the information that you submit to us (or that any third party submits on your behalf) and to update it promptly for any changes. Failure to keep your information current may constitute a breach of these Terms of Use, which may result in immediate termination of your account.

In registering for any of the Services, you also will set an account password. You are solely responsible for setting your password and for maintaining its confidentiality. You also are solely responsible for all activity that occurs on your account. You agree not to share your password with any person, not to permit any person to have access to your password, and not to otherwise facilitate the use of your User ID and password by any other person. You agree to notify us in writing immediately of any unauthorized use of your password or account or any other security breach of which you become aware.

2.2. Connecting to the Services. You are responsible for providing and maintaining, at your own risk, option and expense, appropriate software and hardware capabilities (consistent with any technical, quality or other requirements described in the Services) to enable use of the Services. Epione reserves the right to change the technical requirements for accessing the Services, including any software, hardware or other requirements at any time without prior notice.

By accessing or using the Services, you acknowledge that we are unable to ensure the security of information you send to us through your systems or connections until that information reaches us, and you acknowledge that information sent via email or text message or otherwise through your systems or connections may not be encrypted or secure.

2.3. Your Use of the Services. We grant to you a personal, non-transferable, non-sublicensable, revocable, limited right to access our Site and use the Services in accordance with these Terms of Use. You agree to abide by all copyright notices, information, and restrictions contained in the Services and any Content. You agree not to sell, license, rent, modify, distribute, copy, reproduce, transmit, publicly display, publish, adapt, edit, create derivative works from, or otherwise exploit the Services, any Content, any third-party content, or any other proprietary rights or other valid rights not owned by you without the consent of the respective owners or in any other way that violates any third-party right. In accessing and using the Services, you also agree not to take any action that (i) is threatening, abusive, harassing, defamatory, libelous, deceptive (including impersonating someone else), fraudulent, invasive of another's privacy, tortious, unlawful, obscene, offensive, or profane; (ii) interferes or attempts to interfere with the proper working of the Services or any activities conducted on or as a part of the Services; or (iii) records, processes, or mines information about other users without their consent.

2.4. Email and Phone Communications. As a condition to accessing or using the Services, and certain other aspects of the Services, you must provide us with your email address and phone number. By participating in the Services, YOU EXPRESSLY AGREE AND CONSENT TO OUR COMMUNICATING WITH YOU VIA EMAIL, SMS/TEXT MESSAGES, VOICE CALLS, PUSH NOTIFICATIONS, AND OTHER ELECTRONIC

COMMUNICATIONS THAT RELATE TO THE SERVICES. Standard per minute call and message and data rates may apply. You may opt-out of receiving these messages at any time.

### **3. Your Personal Information and Protected Health Information**

In using the Services, you may provide us with personal information and protected health information. Our practices regarding privacy of personal information and communicating with users in operating the Services and the Site are described in our Privacy Policy. Please review our Privacy Policy to learn about what information we collect from you, how we use and share it, and how we communicate with our users. Our Privacy Policy can be accessed here: [\[www.epionemd.com\]](http://www.epionemd.com). We also may collect protected health information from you while you use the Services. Our practices of privacy regarding your protected health information are described in our Notice of HIPAA Privacy Practices, which can be accessed here: [\[www.epionemd.com\]](http://www.epionemd.com).

### **4. Termination**

We may terminate your access to the Services if we find that you have violated these Terms of Use. Upon termination of your right to use the Services, all licenses and other rights granted to you by these Terms of Use will immediately terminate.

If you wish to terminate your account, you may do so by following the instructions on the Site or contacting us at [ashwini.bapat@epionemd.com](mailto:ashwini.bapat@epionemd.com). Any fees paid for the Services are non-refundable.

All provisions of these Terms which by their nature should survive termination shall survive termination, including, without limitation, ownership provisions, warranty disclaimers, indemnity provisions, and limitations of liability.

### **5. Fees and Payment**

We reserve the right to require payment for the Services. If you elect to use the Services subject to fees, you agree to pay all applicable fees, including any applicable cancellation fees, as described in materials provided by Epione. We also reserve the right to change our prices in the future with prior notice to you. We may provide this notice by email, via the Site, by positing it in the Services or by other means. You agree that if you access the Services subject to fees following that notification, you accept the new charges.

### **6. Ownership**

6.1. Services and Materials. The Site, the Services, and their respective content, including their “look and feel” (e.g., text, graphics, images, logos), proprietary content, information and other materials accessed through or on the Services, including all right, title and interest in the same (including any and all patent, copyright, trade secret, trademark, know-how and any other intellectual property rights therein), are owned by Epione and its licensors, and are protected under intellectual property, copyright, trademark and other laws. You agree not to take any action(s) inconsistent with such ownership interests. Neither these Terms of Use nor your use of any aspects of the Services grants you any right, title, or interest in or to, or any license to reproduce or otherwise use, any trademarks or registered trademarks of Epione.

## **7. Warranty Disclaimer**

THE SITE, THE SERVICES, ANY EPIONE CONTENT, AND ALL SERVICES ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES IMPLIED BY ANY COURSE OF PERFORMANCE OR USAGE OF TRADE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED.

NEITHER EPIONE NOR ITS LICENSORS GUARANTEE OR WARRANT THAT THE SERVICES OR THE CONTENT (A) WILL MEET YOUR REQUIREMENTS; (B) WILL BE UNINTERRUPTED OR VIRUS- OR ERROR-FREE; (C) WILL OPERATE OR BE COMPATIBLE WITH ANY OTHER APPLICATION OR ANY PARTICULAR SYSTEM OR DEVICE; OR (D) CAN OR WILL BE CORRECTED IF DEFECTS ARE IDENTIFIED. FURTHER, EPIONE DOES NOT WARRANT THE QUALITY, SAFETY, SUITABILITY, RELIABILITY OR AVAILABILITY OF ANY SERVICES OBTAINED BY YOU FROM THIRD PARTIES THROUGH THE SERVICES.

PLEASE NOTE THAT SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU. HOWEVER, THE LIMITATIONS ABOVE WILL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

## **8. Medical Disclaimer**

We do not provide any professional medical advice or treatment as a part of the Services, even though some of our health coaches are physicians. NO DOCTOR/PATIENT RELATIONSHIP IS CREATED BY USING THE SERVICES. The information provided by the Services and our health care coaches is for informational purposes only and should not be used for the diagnosis or treatment of any medical condition.

Always seek the advice of your physician or medical professional before deciding to start, alter, or discontinue any medical treatment or for any questions regarding your medical condition. Do not use the services as a substitute for consulting with your physician or other health care provider. If there is any conflict between information you receive from using our services and medical advice from your physician, you should follow the advice of your physician.

## **9. Limitation of Liability**

TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL EPIONE OR ITS LICENSORS BE LIABLE TO YOU OR ANY THIRD PARTY FOR LOSS OF PROFITS, REVENUE OR INCOME, OR FOR ANY INDIRECT, PUNITIVE, SPECIAL, EXEMPLARY, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING FROM OR RELATED TO THESE TERMS OF USE OR THE USE OR INABILITY TO USE THE SERVICES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL EPIONE'S TOTAL AGGREGATE LIABILITY UNDER THESE TERMS OF USE, WHETHER BASED ON BREACH OF WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE GREATER OF: (I) THE AMOUNTS, IF ANY, YOU PAY TO EPIONE FOR THE SERVICES; OR (II) TWO HUNDRED DOLLARS (\$200).

## **10. Geographic Restrictions**

The Services may be subject to professional licensing requirements or other legal or regulatory constraints in some jurisdictions (“**Restricted Areas**”). To the extent our health coaches are not licensed or otherwise authorized to provide the Services in Restricted Areas, Epione makes no representation that the Services will be appropriate or available in such areas. Upon enrollment or at any time while you are subject to these Terms of Use Epione may ask you to confirm the jurisdiction you will be in when accessing the Services. By accepting these Terms of Use you agree to (a) promptly and accurately confirm the jurisdiction(s) you will be in when accessing the services and (b) update immediately if those jurisdictions change. Without prior notice Epione hereby reserves the right to (a) withhold or terminate some or all of the Services if you attempt to access them from a Restricted Area; (b) change the list of areas we deem to be restricted without prior notice; or (c) use geolocation data to determine your location for purpose of determining whether you are in a Restricted Area.

If you access the Services from a Restricted Area, you do so at your own initiative and risk and are responsible for compliance with all local laws and regulations.

## **11. Arbitration**

11.1. Binding Arbitration. Any dispute or claim arising in any way from your use of the Services, except for disputes relating to the infringement of our intellectual property rights or the access or use of the Services in violation of these Terms of Service, will be resolved by binding arbitration, rather than in court, but you may assert claims in small claims court if your claims qualify.

11.2. No Judge or Jury. There is no judge or jury in arbitration, and court review of an arbitration award is limited. However, an arbitrator can award on an individual basis the same damages and relief as a court (including injunctive and declaratory relief or statutory damages), and must follow the terms of these Terms of Use as a court would.

11.3. Arbitrator and Rules. The arbitration will be conducted before a neutral single arbitrator, whose decision will be final and binding, and the arbitral proceedings shall be governed by the AAA Commercial Arbitration Rules, Consumer Due Process Protocol, and Supplementary Procedures for Resolution of Consumer Related Disputes. These rules can be found on the AAA website at [www.adr.org](http://www.adr.org).

11.4. Starting an Arbitration. To begin an arbitration proceeding, you must send us a notice of dispute, in writing, setting forth your name, address and contact information, the facts of the dispute and relief requested. You must send your notice of legal dispute to [ashwini.bapat@epionemd.com](mailto:ashwini.bapat@epionemd.com). Epione will send any notice of dispute to you at the contact information we have for you.

11.5. Format of Proceedings. The arbitration shall be conducted, at the option of the party seeking relief, by telephone, online, or based solely on written submissions.

11.6. Fees. If you initiate arbitration, your arbitration fees will be limited to the filing fee set forth in the AAA’s Consumer Arbitration Rules. Unless the arbitrator finds the arbitration was frivolous or brought for an improper purpose, Epione will pay all other AAA and arbitrator’s fees and expenses.

11.7. Individual Basis. To the fullest extent permitted by applicable law, you and Epione each agree that any dispute resolution proceeding will be conducted only on an individual basis and not in a class, consolidated or representative action. If for any reason a claim proceeds in court rather than in arbitration, you and Epione each waive any right to a jury trial. As a result, PROCEEDINGS TO RESOLVE OR LITIGATE A DISPUTE IN ANY FORUM WILL BE CONDUCTED ONLY ON AN INDIVIDUAL BASIS.

11.8. Limitation Period. In no event shall any claim, action or proceeding by you or Epione be instituted more than one (1) year after the cause of action arose.

11.9. Enforcement. Any judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction. The United Nations Conventions on Contracts for the International Sale of Goods shall have no applicability.

11.10. Invalidity. If a court of competent jurisdiction finds the foregoing arbitration provisions invalid or inapplicable, you and Epione each agree to the exclusive jurisdiction of the Federal and State courts located in the Commonwealth of Massachusetts, and you and Epione each agree to submit to the exercise of personal jurisdiction of such courts for the purposes of litigating any applicable dispute or claim.

11.11. Opting Out. If you do not want to arbitrate disputes with Epione and you are an individual, you may opt out of this arbitration agreement by sending an email to ashwini.bapat@epionemd.com within thirty (30) days of the first of the date you access or use the Services.

## **12. Miscellaneous**

12.1. Governing Law. These Terms of Use shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, excluding its conflicts of law rules.

12.2. Your Consent to Receive Notices. As part of using the Services, you agree to receive all terms, notices, disclosures, and other communications that we provide to users in electronic form, including all communications that we are required by law or these Terms of Use to provide to you. You also acknowledge that receipt of these communications in electronic form satisfies any legal requirement that the communications be in writing. You consent to receive electronic notices, disclosures, and other communications or other information that we provide in connection with your registration or enrollment in the Services and all communications relating to your access to and use of the Services.

12.3. Entire Agreement. These Terms of Use, our Privacy Policy, our Notice of HIPAA Privacy Practices, and any other agreement referenced herein, constitute the entire agreement between you and us with respect to the Services and supersede all prior or contemporaneous communications and proposals (whether oral, written, or electronic) between you and us with respect to the Services. If any provision of these Terms of Use is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that these Terms of Use will remain in full force and effect. The failure of either party to exercise in any respect any right provided for in these Terms of Use shall not be deemed a waiver of any further rights under these Terms of Use.

12.4. Injunctive Relief. You agree that a breach of these Terms of Use will cause irreparable injury to Epione for which monetary damages would not be an adequate remedy and Epione shall be entitled to equitable relief in addition to any remedies it may have hereunder or at law without a bond, other security or proof of damages.

12.5. Assignment. These Terms of Use will inure to the benefit of and will be binding upon each party's successors and assigns. These Terms of Use and the licenses granted hereunder may be assigned by Epione but may not be assigned by you without the prior express written consent of Epione. Any attempt by you to assign these Terms of Use without the written consent of Epione shall be null and void.

12.6. Independent Contractors. Nothing contained in these Terms of Use will be deemed to constitute either party as the agent or representative of the other party or both parties as joint venturers or partners for any purpose.

12.7. Modifications. We may occasionally update these Terms of Use. When we do update these Terms of Use, we will also revise the “Last Updated” date at the top of these Terms of Use. If we make changes to these Terms of Use on the Site and we may also send emails to our users who have created an account containing a link to the revised Terms of Use. If you continue to use the Services after we post an update to these Terms of Use, you indicate your acceptance of the updated Terms of Use. If you disagree with the modified Terms of Use, you should stop using the Services.

12.8. Contact Us. If you have any questions regarding these Terms of Use or the Services, please contact us at [ashwini.bapat@epionemd.com](mailto:ashwini.bapat@epionemd.com).