

## Wellsmith -- Terms of Service

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1. **General.** Please read these Terms carefully. You are authorized to use the Wellsmith App, Site or Services only if you agree to abide by these Terms, along with all applicable laws, rules and regulations. By accessing and using the Wellsmith App, Site or Services you agree to be bound by these Terms. If you do not agree to these Terms, do not access or use the Wellsmith App, Site or the Services.

2. **Privacy Policy.** Your use of the Wellsmith App, Site and/or the Services is subject to our [Privacy Policy](#). Please review this policy so you understand what information we collect through the Wellsmith App, Site and the Services, how we use it, how we secure it, and when we may share it. If you do not agree to the terms of our [Privacy Policy](#), do not access or use the Wellsmith App, Site or the Services. In addition, when Wellsmith is acting as a business associate under the Health Insurance Portability and Accountability Act (HIPAA), our Privacy Policy applies to those Services.

3. **License and Use.** Subject to your compliance with these Terms, Wellsmith grants to you a limited, non-exclusive, non-transferable license to download and install the Wellsmith App on a mobile device that you own or control and to access and use the Wellsmith App solely for your personal and non-commercial uses. The Wellsmith App is licensed and not sold, and Wellsmith and its third party licensors, if any, reserve all rights not expressly granted to you, including any and all worldwide rights in or to all intellectual property rights in and to the Wellsmith App. Wellsmith and its third party licensors, if any, shall at all times retain all title to and ownership of the Wellsmith App and all copies, improvements, enhancements or modifications thereto.

4. **Modifications to these Terms.** Wellsmith may modify these Terms from time to time, and any such modifications shall be effective upon posting by Wellsmith on the Wellsmith App. You agree to be bound to any changes to these Terms when you use the Wellsmith App after any such modification is posted. It is therefore important that you review these Terms periodically to ensure that you are updated as to any changes. If you do not want to be bound by a modification to these Terms, you will need to terminate your account, if any, and refrain from using the Wellsmith App after that date.

5. **Modifications to the Wellsmith App, Site or Services.** Wellsmith may discontinue, modify or change, temporarily or permanently, the Wellsmith App, Site or Services, or any portion thereof, at any time, without notice to you. Wellsmith makes no commitment to update the information and content on the Wellsmith App, Site or Services.

6. **Registration and Password.** You must provide true, accurate, and complete information about yourself as prompted by the Wellsmith App account registration. In addition, you must update that information in order to maintain its truth, accuracy, and completeness.

ALL CONTENT OR INSTRUCTIONS TRANSMITTED BY OR RECEIVED FROM ANYONE PRESENTING YOUR PASSWORD ON THE WELLSMITH APP WILL BE DEEMED BINDING ON YOU. You agree that you are solely liable for all actions taken via your password, whether or not made with your knowledge or authority. You agree to guard your password carefully, with the full awareness that a failure to keep it secure will enable others to engage in transactions through the Wellsmith App for which you will be legally responsible. If you suspect that someone may have obtained access to your password who is not intended to have authority to act on your behalf, please contact Wellsmith immediately to authorize Wellsmith to deny access to the Wellsmith App to anyone else presenting your password. Wellsmith reserves the right to disable any user name, password or other identifier, whether chose by you or provided by us, at any time if, in our sole opinion, you have violated these Terms.

7. **Age.** You must be at least 18 years old to register and use the Wellsmith App, or you must be the legal guardian for someone under age 18 whose data is accessed through the Wellsmith App.

8. **Termination.** Wellsmith, in its sole discretion, may terminate your account, direct you to cease using the Wellsmith App, and discontinue or restrict your access to the Wellsmith App, all without prior notice to you and for any reason. You agree that Wellsmith shall not be liable to you or to any third party for any modification, suspension, or discontinuance of the Wellsmith App, your status as an account holder, or any parts thereof.

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Additionally, you agree not to: use the Wellsmith App in any manner that could disable, overburden, damage, or impair the Wellsmith App or interfere with any other party's use of the Wellsmith App, including their ability to engage in real time activities through the Wellsmith App; use any robot, spider or other automatic device, process or means to access the Wellsmith App for any purpose, including monitoring or copying any of the material on the Wellsmith App; use any manual process to monitor or copy any of the material on the Wellsmith App or for any other unauthorized purpose without our prior written consent; use any device, software or routine that interferes with the proper working of the Wellsmith App; introduce any viruses, trojan horses, worms, logic bombs or other material which is malicious or technologically harmful; attempt to gain unauthorized access to, interfere with, damage or disrupt any parts of the Wellsmith App, the server on which the Wellsmith App is stored, or any server, computer or database connected to the Wellsmith App; attack the Wellsmith App via a denial-of-service attack or a distributed denial-of-service attack; or otherwise attempt to interfere with the proper working of the Wellsmith App.

12. **User Contributions.** The Wellsmith App may contain features that allow users to post, submit, publish, display or transmit to other users or other persons (hereinafter, "post") information or materials (collectively, "User Contributions") on or through the Wellsmith App.

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13. **Contribution Standards.** These contribution standards apply to any and all User Contributions. User Contributions must in their entirety comply with all applicable federal, state, local and international laws and regulations. Without limiting the foregoing, User Contributions must not: contain any material which is defamatory, obscene, indecent, abusive, offensive, harassing, violent, hateful, inflammatory or otherwise objectionable; promote sexually explicit or pornographic material, violence, or discrimination based on race, sex, religion, nationality, disability, sexual orientation or age; infringe any patent, trademark, trade secret, copyright or other intellectual property or other rights of any other person; violate the legal rights (including the rights of publicity and privacy) of others or contain any material that could give rise to any civil or criminal liability under applicable laws or regulations or that otherwise may be in conflict with these Terms; be likely to deceive any person; promote any illegal activity, or advocate, promote or assist any unlawful act; cause annoyance, inconvenience or needless anxiety or be likely to upset, embarrass, alarm or annoy any other person; impersonate any person, or misrepresent your identity or affiliation with any person or organization; involve commercial activities or sales, such as contests, sweepstakes and other sales promotions, barter or advertising; or give the impression that they emanate from or are endorsed by us or any other person or entity, if this is not the case.

14. **Monitoring and Enforcement.** Wellsmith reserves the right to: remove or refuse to post any User Contributions for any or no reason in our sole discretion; take any action with respect to any User Contribution that we deem necessary or appropriate in our sole discretion, including if we believe that such User Contribution violates these Terms, including the Contribution Standards, infringes any intellectual property right or other right of any person or entity, threatens the personal safety of users of the Wellsmith App or the public or could create liability for Wellsmith; take appropriate legal action, including without limitation, referral to law enforcement, for any illegal or unauthorized use of the Wellsmith App; and terminate or suspend your access to all or part of the Wellsmith App for any or no reason, including without limitation, any violation of these Terms.

We do not undertake to review all User Contributions before they are posted on the Wellsmith App, and cannot ensure prompt removal of objectionable material after it has been posted. Accordingly, we assume no liability for any action or inaction regarding transmissions, communications or information provided by any user or third party. We have no liability or responsibility to anyone for performance or nonperformance of the activities described in this section.

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16. **Protected Health Information.** If you are a customer of Wellsmith and are considered to be “covered entity” or “business associate,” as those terms are defined by HIPAA, and you do not have a business associate agreement with us, you agree to sign our standard business associate agreement. If you are not a “covered entity” or “business associate,” as those terms are defined by HIPAA, then you represent and warrant that you are not bound by any legal or contractual restrictions which would prohibit or limit your ability to receive or access “protected health information,” as defined in HIPAA, through the Wellsmith App, Site, or Services.

17. **Online Purchases and Other Terms and Conditions.** To the extent applicable, all purchases through the Wellsmith App are subject to our additional terms of sale as provided and posted on the Wellsmith App.

18. **Links to Other Sites.** The Wellsmith App or Site may contain hyperlinks to third party websites that are not under the control of Wellsmith. Wellsmith is not responsible for any content in any advertisement or hyperlink on the Wellsmith App or Site or for any content in any hyperlinked website. If you access a third party website from the Wellsmith App or Site, then you do so at your own risk. WELLSMITH MAKES NO WARRANTY REGARDING ANY INFORMATION OBTAINED FROM ANY HYPERLINKED THIRD PARTY SITE. A hyperlink to a third party website does not imply that Wellsmith endorses the content on or the business of the hyperlinked website. You are solely responsible for determining the integrity and reliability of the information in the advertisement or hyperlink on the Wellsmith App or Site as well as the information on the hyperlinked website. Wellsmith provides hyperlinks only as a convenience. Additionally, your dealings with or participation in promotions of advertisers found on the Wellsmith App or Site, including payment for and delivery of goods and services, and any other terms (such as warranties) are solely between you and such advertisers. You agree that Wellsmith shall not be responsible for any loss or damage of any sort relating to your dealings with such advertisers.

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20. **Disclaimer of Warranties.** Wellsmith uses reasonable efforts to provide accurate, complete, and current information on the Wellsmith App, Site and Services. However, Wellsmith does not guarantee or warrant that the Wellsmith App, Site and Services, or the Content therein, is accurate, complete, timely, or free of technical or typographical errors. It is your responsibility to verify any information provided.

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NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, WELLSMITH'S LIABILITY TO YOU FOR ANY CAUSE WHATSOEVER AND REGARDLESS OF THE FORM OF THE ACTION, WILL AT ALL TIMES BE LIMITED TO THE GREATER OF: (I) THE AMOUNT PAID BY YOU TO WELLSMITH FOR THE ACCESS TO AND USE OF THE WELLSMITH APP; OR (II) ONE HUNDRED U.S. DOLLARS (\$100.00).

SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO SOME OF THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU.

22. **Indemnity.** You agree to indemnify and hold harmless Wellsmith, and its subsidiaries, affiliates, officers, employees, agents, and other partners against any and all claims and expenses, including attorneys' fees, arising from your use of the Wellsmith App, Site or Services, any breach of these Terms, or breach of any third party's rights. This indemnification shall survive any termination of your status as an account holder or use of the Wellsmith App. We reserve the right to control the defense of any claim for which we are entitled to indemnification under this section. In such event, you agree to provide us with such cooperation as is reasonably requested by us.

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24. **Governing Law and Jurisdiction.** These Terms, and any claim relating to or arising out of the use of the Wellsmith App, site or Services shall be governed by the laws of the State of Texas, without regard to its conflicts of laws rules. You expressly consent to the jurisdiction of the Texas state courts and U.S. federal courts located in Travis County, Texas for any claim relating to or arising out of the use of the Wellsmith App, site or Services.

25. **Limitation on Time to File Claims.** ANY CAUSE OF ACTION OR CLAIM YOU MAY HAVE ARISING OUT OF OR RELATING TO THESE TERMS OR THE WELLSMITH APP MUST BE COMMENCED WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES, OTHERWISE, SUCH CAUSE OF ACTION OR CLAIM IS PERMANENTLY BARRED.

26. **Waiver and Severability.** No waiver of by Wellsmith of any term or condition set forth in these Terms shall be deemed a further or continuing waiver of such term or condition or a

waiver of any other term or condition, and any failure of Wellsmith to assert a right or provision under these Terms shall not constitute a waiver of such right or provision. If any provision of these Terms is held by a court or other tribunal of competent jurisdiction to be invalid, illegal or unenforceable for any reason, such provision shall be eliminated or limited to the minimum extent such that the remaining provisions of these Terms will continue in full force and effect.

27. **Entire Agreement.** These Terms, along with the Privacy Policy and Communication Policy, as each may be modified or amended from time-to-time, constitute the entire agreement between you and Wellsmith.

28. **Comments and Concerns.** All feedback, comments, requests for technical support and other communications relating to the Wellsmith App should be directed to support@wellsmith.com. You may also call us at 1-866-266-7792, Monday – Friday, 9 AM-5 PM, Eastern Standard Time (Closed weekends and holidays).