

NotYet Inc.

Website, Application, and Device User Terms of Use

Last Modified: May 2023

## **Acceptance of the Terms of Use**

Welcome to the website operated by NotYet Inc. (“NotYet,” “we,” “us” or “our”). The following terms and conditions (“Terms of Use”), govern your access to and use of the NotYet website, health monitoring service offered by NotYet (“Monitoring Service”), the associated NotYet health monitoring wearable device and any other hardware devices we may make available (collectively, the “Device”), and the NotYet mobile application (the “App,” collectively with the Device and Monitoring Service, the “Services”).

You understand the Services do not render medical advice or diagnose or prevent any specific disease, including any communicable disease or virus. If you have any concerns about your health, including whether you have been exposed to or have contracted any disease or virus, immediately contact your healthcare provider.

**IF YOU ARE EXPERIENCING A MEDICAL EMERGENCY, YOU SHOULD DIAL “911” IMMEDIATELY.**

Our Services are not for medical emergencies or urgent situations. You should not disregard or delay to seek medical advice based on anything that appears or does not appear on the Services. If you believe you have an emergency, call 9-1-1 immediately.

Please read these Terms of Use carefully before you start to use the Services. By using the Services, you accept and agree to be bound and abide by these Terms of Use [https://notyet.tech/documents/terms\\_of\\_use](https://notyet.tech/documents/terms_of_use) and Privacy Policy [https://notyet.tech/documents/privacy\\_policy](https://notyet.tech/documents/privacy_policy), which is incorporated herein by reference. If you do not agree to the Terms of Use or the Privacy Policy, you must not access or use the Services. Capitalized terms used but not defined in these Terms of Use have the meaning given to them in our other policies (e.g., our Privacy Policy).

The Services are offered and available to users who are 18 years of age or older. We do not collect or maintain personal information from people we actually know are under 18 years old. If we obtain actual knowledge that a user is under 18 years old, we will use our best efforts to remove that person’s information from our database. By using the Services, you represent and warrant that you are at least 18 years old and of legal age to form a binding contract with us. If you do not meet all of these requirements, you must not access or use the Services. If you believe we have collected personal information from someone under the age of 18, please contact us at [info@notyet.tech](mailto:info@notyet.tech).

## **Binding Arbitration**

These Terms of Use provide that all disputes between you and NotYet that in any way relate to these Terms of Use or your use of the Services will be resolved by BINDING ARBITRATION. ACCORDINGLY, YOU AGREE TO GIVE UP YOUR RIGHT TO GO TO COURT (INCLUDING IN A CLASS ACTION PROCEEDING) to assert or defend your rights under these Terms of Use. Your rights will be determined by a NEUTRAL ARBITRATOR and NOT a judge or jury and your claims cannot be brought as a class action. Please review the Section below entitled Dispute Resolution for the details regarding your agreement to arbitrate any disputes with NotYet.

## **Changes to the Terms of Use**

We may revise and update these Terms of Use from time to time in our sole discretion. All changes are effective immediately when we post them and apply to all access to and use of the Services thereafter. Your continued use or visitation of the Services following the posting of revised Terms of Use means that you accept and agree to the changes. You are expected to check this page from time to time so you are aware of any changes, as they are binding on you. You may also print a copy of these Terms of Use for your reference using the print functionality in your browser, but only the most current version of these Terms of Use will apply to the Services.

## **Services; No Medical or Legal Advice by NotYet**

NotYet offers a platform for monitoring vital sign, physiologic and symptomatic event health monitoring, analysis and reporting that may facilitate communication between you and your health care provider (each, a “Provider”) (if you are a Provider, please review the section below entitled Supplemental Terms Applicable to Providers), or family member or friend (each, an “Caretaker”). This health information may include respiratory rate, heart rate, blood pressure, temperature, activity level, sleep duration, body position, step count, gait analysis, coughing, sneezing and vomit frequency and other symptomatic or biometric data. NotYet does not provide medical advice or care itself. Rather, your Provider the Services to better provide clinical services to his or her patients, or your Observer uses the Services to monitor your health in order to provide better care for you. The Providers and/or the Caretakers, and not NotYet, are responsible for the quality and appropriateness of the care that is rendered for you.

The Providers are independent of NotYet. Any information or advice received from a Provider comes from them alone, and not from NotYet. Your interactions with the Providers via our products and services are not intended to take the place of your relationship with your regular health care practitioners or primary care physician. Neither NotYet, nor any of its subsidiaries or affiliates or any third party who may promote the Services or provide a link to the Services, shall be liable for any professional advice obtained from a Provider via the Services, nor any information obtained on the Services. NotYet does not recommend or endorse any specific Providers, tests, physicians, medications, products, or procedures. You acknowledge that your

reliance on any Providers or information delivered by the Providers via or because of the information on the Services is solely at your own risk and you assume full responsibility for all risks associated herewith.

NotYet does not make any representations or warranties about the training or skill of any Providers who deliver services to you based on your use of the Services. The content of the Services, including text, copy, audio, video, photographs, illustrations, graphics, and other visuals, is for informational purposes only and does not constitute professional legal or medical advice, diagnosis, treatment, or recommendations of any kind by NotYet. NotYet does not provide any legal advice or representations in any way regarding any legal issues associated with advice, information, goods, or services offered by a Provider, including but not limited to any compliance obligations or steps necessary to comply with any state or federal laws and regulations. You should always seek the advice of your qualified health care professionals with any questions or concerns you may have regarding your individual needs and any medical conditions. All information provided by NotYet, or in connection with any communications supported by NotYet, is intended to be for general information purposes only, and is in no way intended to create a provider-patient relationship as defined by state or federal law.

You should seek emergency help or follow up care when recommended by a Provider or when otherwise needed. You should continue to consult with your primary provider and other healthcare professionals as recommended. Always seek the advice of a physician or other qualified healthcare provider concerning questions you have regarding a medical condition and before stopping, starting, or modifying any treatment or modification.

### **Accessing the Services and Account Security**

We reserve the right to terminate or amend the Services, and any service or material we provide on the Services, in our sole discretion without notice. We will not be liable if for any reason all or any part of the Services is unavailable at any time or for any period. From time to time, we may restrict access to some parts of the Services or the entire Services.

The Services are available only to users who set up an account (“Account”). To access the Services, you may be asked to provide certain registration details or other information. It is a condition of your use of the Services that all the information you provide on the Services is correct, current and complete.

If you choose, or are provided with, a username, password or any other piece of information as part of our security procedures, you must treat such information as confidential, and you must not disclose it to any other person or entity. You represent and warrant that all information and materials you submit, publish, post, or otherwise through the Services is true and accurate and not fraudulent or misleading in any reasonable way. You acknowledge that your Account is personal to you and you agree not to provide any other person with access to the Services or portions of it using your username, password, or other security information. You agree to notify us immediately of any unauthorized access to or use of your username or password or any other breach of security. You also agree to ensure that you exit from your Account at the end of each session. You should use particular caution when accessing your Account from a public or shared

computer so that others are not able to view or record your password or other personal information. We have the right to disable any username, password or other identifier, whether chosen by you or provided by us, at any time in our sole discretion for any or no reason, including if, in our opinion, you have violated any provision of these Terms of Use. We may rely on the authority of anyone accessing your Account or using your login credentials and in no event and under no circumstances shall we be held liable to you for any liabilities or damages resulting from or arising out of (i) any action or inaction by us under this provision, (ii) any compromise of the confidentiality of your Account or password, and (iii) any unauthorized access to your Account or use of your password.

## **Intellectual Property Rights**

The Services and its entire contents, features and functionality (including, but not limited to, all information, software, text, displays, images, video and audio, and the design, selection and arrangement thereof), are owned by us, our licensors or other providers of such material and are protected by United States and international copyright, trademark, patent, trade secret and other intellectual property or proprietary rights laws. No right, title or interest in or to the Services or any content on the Services is transferred to you, and we reserve all rights not expressly granted herein. Upon receipt of payment in full for the subscription to the Services, NotYet grants you a limited, revocable, non-transferrable, and non-assignable license to use the object code version of the software components of the Services for your personal use. Any use of the Services not expressly permitted by these Terms of Use is a breach of these Terms of Use and may violate copyright, trademark and other laws.

Our name, brands, logos, slogans and other trademarks are our trademarks. All other names, brands, logos, product and service names, and designs appearing on the Services are the trademarks of their respective owners. You may not use such trademarks without our prior written permission.

These Terms of Use permit you to use the Services for your personal, non-commercial use only. You must not reproduce, distribute, modify, create derivative works of, publicly display, publicly perform, republish, download, store or transmit any of the material on our Services, except as follows:

- You may store files that are automatically cached by your web browser for display enhancement purposes.
- You may print or download a reasonable number of pages of the Services for your own personal, non-commercial use and not for further reproduction, publication or distribution.
- You may download a single copy to your mobile device solely for your own personal, non-commercial use.

You must not:

- Modify copies of any materials from the Services;

- Use any illustrations, photographs, video or audio sequences or any graphics separately from the accompanying text;
- Delete or alter any copyright, trademark or other proprietary rights notices from copies of materials from the Services; or
- Access or use for any commercial purposes any part of the Services or any services or materials available through the Services.

## **Prohibited Uses**

You may use the Services only for lawful purposes and in accordance with these Terms of Use. You agree not to use the Services:

- In any way that violates any applicable federal, state, local or international law or regulation (including, without limitation, any laws regarding the export of data or software to and from the United States or other countries).
- For the purpose of exploiting, harming or attempting to exploit or harm others in any way by exposing them to inappropriate content, including asking for personally identifiable information or otherwise.
- To transmit, or procure the sending of, any advertising or promotional material without our prior written consent, including any “junk mail”, “chain letter”, “spam” or any other similar solicitation.
- To impersonate or attempt to impersonate us, our employees, another user or any other person or entity (including, without limitation, by using e-mail addresses or screen names associated with any of the foregoing).
- To engage in any other conduct that restricts or inhibits anyone’s use or enjoyment of the Services, or which, as determined by us, may harm us or other users of the Services or expose them to liability.

Additionally, you agree not to:

- Use the Services in any manner that could disable, overburden, damage, or impair the Services or interfere with any other user’s use of the Services, including his or her ability to engage in real time activities through the Services.
- Use any robot, spider or other automatic device, process or means to access the Services for any purpose, including monitoring or copying any of the material on the Services.
- Use any manual process to monitor or copy any of the material on the Services 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 Services.
- Introduce any viruses, Trojan horses, worms, logic bombs, keystroke logging, or other material which is malicious or technologically harmful.
- Otherwise attempt to interfere with the proper working of the Services.

You are further prohibited from violating or attempting to violate the security of the Services, including, without limitation: (a) accessing data not intended for such user or logging onto a server or an account which the user is not authorized to access; (b) attempting to probe, scan, or

test the vulnerability of a system or network or to breach security or authentication measures without proper authorization; or (c) accessing or using the Services or any portion thereof without authorization, in violation of these Terms of Use or in violation of applicable law.

### **Reliance on Information Posted**

The information presented on or through the Services is made available solely for general information purposes. We do not warrant the accuracy, completeness or usefulness of this information. Any reliance you place on such information is strictly at your own risk. We disclaim all liability and responsibility arising from any reliance placed on such information by you or any other visitor to the Services, or by anyone who may be informed of any of its contents. The Services may include content provided by third parties, including materials provided by other users, bloggers and third-party licensors, syndicators, aggregators and/or reporting services. All statements and/or opinions expressed in these materials, and all articles and responses to questions and other content, other than the content we provide, are solely the opinions and the responsibility of the person or entity providing those materials. These materials do not necessarily reflect our opinion. We are not responsible, or liable to you or any third party, for the content or accuracy of any materials provided by any third parties.

### **Pilot Version**

If you are using a pilot (free trial) version of the Services, then all of the terms of these Terms of Use shall apply to your use of the Services. No fee will be charged for the services provided.

### **Third Party Websites, Applications, and Resources**

NotYet makes no representations whatsoever about any third-party website, application, or content that you may access through or with the Services. When you access a non-NotYet site or application, please understand that it is independent from NotYet, and that NotYet has no control over the content on that website or application. In addition, a link to or integration with a non-NotYet website or application does not mean that NotYet endorses or accepts any responsibility for the content, or the use, of the linked site or application. It is up to you to take precautions to ensure that whatever you select for your use or download is free of such items as viruses, worms, Trojan horses, and other items of a destructive nature. If you decide to access or use any third-party application or the third-party sites linked to the Services, you do this entirely at your own risk.

### **Information About You and Your Visits to the Services**

All information we collect on the Services is subject to our Privacy Policy [https://notyet.tech/documents/privacy\\_policy](https://notyet.tech/documents/privacy_policy). By using the Services, you consent to all actions taken by us with respect to your information in compliance with the Privacy Policy.

### **Electronic Communications**

When you use the Services or Services, or send e-mails, messages, and other communications from your desktop or mobile device to us, you are communicating with us electronically. You consent to receive communications from us electronically. You agree that (a) all agreements and consents can be signed electronically and (b) all notices, disclosures, and other communications that we provide to you electronically satisfy any legal requirement that such notices and other communications be in writing. NotYet may contact you by telephone, mail, or email to verify your Account information. NotYet may request further information from you and you agree to provide such further information to ensure that you have not fraudulently created your Account. If you do not provide this information in the manner requested within 14 days of the request, we reserve the right to suspend, discontinue, or deny your access to and use of the Services and the Services until you provide the information to us as requested.

### **Geographic Restrictions**

The owner of the Services is based in the United States of America ("USA"). We process all data in the USA. We make no claims or representations that the Services or any of its content is accessible or appropriate outside of the United States. Access to the Services may not be legal by certain persons or in certain countries. If you access the Services from outside the USA, you do so on your own initiative and are responsible for compliance with local laws.

Certain companies affiliated with us may provide services and operate websites which may be linked to from our Services and which are governed by their own terms of use and not these Terms of Use and may be subject to laws of other local or international jurisdictions.

### **Disclaimer of Warranties**

You understand that we cannot and do not guarantee or warrant that authorized files or content available for downloading from the Services or the internet will be free of viruses, malware or other destructive code. You are responsible for implementing sufficient procedures and checkpoints to satisfy your particular requirements for anti-virus protection and accuracy of data input and output, and for maintaining a means external to our Services for any reconstruction of any lost data.

WE WILL NOT BE LIABLE FOR ANY LOSS OR DAMAGE CAUSED BY A DISTRIBUTED DENIAL-OF-SERVICE ATTACK, VIRUS OR OTHER TECHNOLOGICALLY HARMFUL MATERIAL THAT MAY INFECT YOUR COMPUTER EQUIPMENT, COMPUTER PROGRAMS, DATA OR OTHER PROPRIETARY MATERIAL DUE TO YOUR USE OF THE SERVICES OR ANY SERVICES OR ITEMS OBTAINED THROUGH THE SERVICES OR TO YOUR DOWNLOADING OF ANY MATERIAL POSTED ON IT, OR ON ANY WEBSITE LINKED TO IT.

YOUR USE OF THE SERVICES, ITS CONTENT, AND ANY SERVICES OR ITEMS OBTAINED THROUGH THE SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, AT YOUR OWN RISK, AND WITHOUT ANY WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED. NEITHER WE NOR ANY OF OUR PROVIDERS, PARTNERS, AFFILIATES, OR HEALTH CONSULTANTS MAKE ANY

WARRANTY OR REPRESENTATION WITH RESPECT TO THE COMPLETENESS, SECURITY, RELIABILITY, QUALITY, CURRENCY, ACCURACY, AVAILABILITY OR OPERATION OF THE SERVICES, OR THE INFORMATION OR CONTENT INCLUDED THEREON. YOU ACKNOWLEDGE AND AGREE THAT THE RELIABILITY AND PERFORMANCE OF THE DEVICE AND THE SERVICES OR OTHER ITEMS OBTAINED THROUGH USE THEREOF IS LARGELY DEPENDENT ON YOUR OWN ACTIONS AND OMISSIONS. THE WITHOUT LIMITING THE FOREGOING, NEITHER WE NOR ANYONE ASSOCIATED WITH US REPRESENT OR WARRANT THAT THE SERVICES, ITS CONTENT OR ANY SERVICES OR ITEMS OBTAINED THROUGH THE SERVICES WILL BE ACCURATE, RELIABLE, ERROR-FREE OR UNINTERRUPTED, THAT DEFECTS WILL BE CORRECTED, THAT OUR SERVICES, OUR (AND OUR SERVICE PROVIDERS') SERVERS, THE CONTENT, OR COMMUNICATIONS SENT FROM OR ON BEHALF OF US ARE FREE OF VIRUSES, SCRIPTS, TROJAN HORSES, WORMS, MALWARE, TIME BOMBS OR OTHER HARMFUL COMPONENTS OR THAT THE SERVICES OR ANY SERVICES OR ITEMS OBTAINED THROUGH THE SERVICES WILL OTHERWISE MEET YOUR NEEDS, EXPECTATIONS, OR REQUIREMENTS OR ACHIEVE ANY INTENDED RESULTS. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM US OR THROUGH THE SERVICES OR SERVICES WILL CREATE ANY WARRANTY NOT EXPRESSLY MADE HEREIN.

TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, WE, ON OUR OWN BEHALF AND ON BEHALF OF OUR AFFILIATES AND OUR RESPECTIVE LICENSORS AND SERVICE PROVIDERS, HEREBY DISCLAIM ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, WITH RESPECT TO THE SERVICES AND THE SERVICES, INCLUDING, BUT NOT LIMITED TO, ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, OPERABILITY, CONDITION, QUIET ENJOYMENT, VALUE, ACCURACY OF DATA AND SYSTEM INTEGRATION, AND WARRANTIES THAT MAY ARISE OUT OF COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OR TRADE PRACTICE.

THE FOREGOING DOES NOT AFFECT ANY WARRANTIES WHICH CANNOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAW. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES OR THE LIMITATIONS ON THE APPLICABLE STATUTORY RIGHTS OF A CONSUMER, SO SOME OF THESE EXCLUSIONS AND LIMITATIONS MAY NOT APPLY TO YOU.

### **Limitation on Liability**

IN NO EVENT WILL WE, OUR AFFILIATES OR THEIR LICENSORS, SERVICE PROVIDERS, EMPLOYEES, AGENTS, OFFICERS OR DIRECTORS BE LIABLE FOR DAMAGES OF ANY KIND, UNDER ANY LEGAL THEORY, ARISING OUT OF OR IN CONNECTION WITH YOUR USE, OR INABILITY TO USE, THE SERVICES, ANY WEBSITES LINKED TO IT, ANY CONTENT ON THE SERVICES OR SUCH OTHER WEBSITES OR ANY SERVICES OR ITEMS OBTAINED THROUGH THE SERVICES OR SUCH OTHER WEBSITES, INCLUDING ANY DIRECT, INDIRECT, SPECIAL,



INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES, INCLUDING, BUT NOT LIMITED TO, PERSONAL INJURY, PAIN AND SUFFERING, EMOTIONAL DISTRESS, PROPERTY DAMAGE, LOSS OF REVENUE, LOSS OF PROFITS, LOSS OF BUSINESS OR ANTICIPATED SAVINGS, BUSINESS INTERRUPTION, LOSS OF USE, LOSS OF GOODWILL, LOSS OR CORRUPTION OF DATA, COST OF SUBSTITUTE GOODS OR SERVICES, OR COMPUTER FAILURE OR MALFUNCTION.

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL WE OR OUR AFFILIATES, OR ANY OF OUR RESPECTIVE LICENSORS OR SERVICE PROVIDERS, HAVE ANY LIABILITY ARISING FROM OR RELATED TO YOUR USE OF OR INABILITY TO USE THE SERVICES FOR:

- ANY ACTION YOU TAKE BASED ON THE INFORMATION YOU RECEIVE THROUGH OR FROM THE SERVICES;
- YOUR FAILURE TO KEEP YOUR PASSWORD OR ACCOUNT DETAILS SECURE AND CONFIDENTIAL;
- THE COST OF PROCUREMENT OF SUBSTITUTE GOODS AND SERVICES RESULTING FROM ANY GOODS, DATA, INFORMATION, OR SERVICES PURCHASED OR OBTAINED OR MESSAGES RECEIVED OR TRANSACTIONS ENTERED INTO THROUGH OR FROM THE SERVICES;
- THE IMPROPER AUTHORIZATION FOR THE SERVICES BY SOMEONE CLAIMING SUCH AUTHORITY; STATEMENTS OR CONDUCT OF ANY THIRD PARTY ON THE SERVICES;
- THE INFORMATION, ADVICE, OR TREATMENT OF A PROVIDER OR YOUR PROVIDERS ACTIONS OR OMISSIONS.

THESE LIMITATIONS WILL APPLY WHETHER SUCH DAMAGES ARISE OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR ANY OTHER THEORY OR CAUSE OF ACTION AND REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE OR WE WERE ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

WE DO NOT GUARANTEE CONTINUOUS, UNINTERRUPTED OR SECURE ACCESS TO THE SERVICES. THE OPERATION OF THE SERVICES MAY BE INTERFERED WITH BY NUMEROUS FACTORS OUTSIDE OUR CONTROL. UNDER NO CIRCUMSTANCES SHALL WE BE LIABLE FOR ANY DAMAGES THAT RESULT FROM THE USE OF OR INABILITY TO USE THE SERVICES, INCLUDING BUT NOT LIMITED TO RELIANCE BY YOU ON ANY INFORMATION OBTAINED FROM THE SERVICES OR THAT RESULT FROM MISTAKES, OMISSIONS, INTERRUPTIONS, DELETION OF FILES OR E-MAIL, ERRORS, DEFECTS, VIRUSES, DELAYS IN OPERATION OR TRANSMISSION, OR ANY FAILURE OF PERFORMANCE, WHETHER OR NOT RESULTING FROM ACTS OF GOD, COMMUNICATIONS FAILURE, THEFT, DESTRUCTION, OR UNAUTHORIZED ACCESS TO OUR RECORDS, PROGRAMS, OR SERVICES. YOU HEREBY ACKNOWLEDGE THAT THIS PARAGRAPH SHALL APPLY TO ALL CONTENT, DATA, AND INFORMATION SUBMITTED TO THE SERVICES.

IF YOU ARE DISSATISFIED WITH ANY PORTION OF THE SERVICES, YOUR SOLE AND EXCLUSIVE REMEDY IS TO DISCONTINUE USE OF THE SERVICES. TO THE EXTENT ANY ASPECTS OF THE FOREGOING LIMITATIONS OF LIABILITY ARE NOT ENFORCEABLE, OUR AGGREGATE LIABILITY TO YOU FOR ALL CLAIMS ARISING FROM OR RELATED TO THE SERVICES IS LIMITED TO THE LESSER OF (I) THE AMOUNT OF FEES ACTUALLY PAID BY YOU FOR USE OF THE SERVICES OR (II) ONE HUNDRED DOLLARS (U.S. \$100.00). YOU HEREBY AGREE TO WAIVE, TO THE FULLEST EXTENT PERMITTED BY LAW, ALL LAWS THAT LIMIT THE EFFICACY OF SUCH INDEMNIFICATIONS OR RELEASES.

THE FOREGOING DOES NOT AFFECT ANY LIABILITY WHICH CANNOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAW. SOME JURISDICTIONS DO NOT ALLOW CERTAIN LIMITATIONS OF LIABILITY SO SOME OR ALL OF THE ABOVE LIMITATIONS OF LIABILITY MAY NOT APPLY TO YOU. IF YOU ARE A CALIFORNIA RESIDENT, YOU WAIVE CALIFORNIA CIVIL CODE §1542, WHICH SAYS: A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR. IF YOU ARE A RESIDENT OF A STATE WITH PROTECTIONS SIMILAR TO CALIFORNIA CIVIL CODE §1542, YOU HEREBY WAIVE SUCH PROVISIONS OR PROTECTIONS.

### **Indemnification**

You agree to defend, indemnify and hold harmless us, our affiliates, licensors and service providers, and our and their respective officers, directors, employees, contractors, agents, licensors, suppliers, successors and assignees, from and against any and all claims, liabilities, deficiencies, damages, actions, judgments, settlements, interest, awards, losses, fines, penalties, costs, expenses or fees or any kind (including reasonable attorneys' fees and costs) arising from or relating to your violation of these Terms of Use or the terms in our other policies and agreements that you agree to be bound by, your use or misuse of the Services, including, but not limited to, any use of the Services's content, Services, and products other than as expressly authorized, your use of any information obtained from the Services, any User Content you submit, post to or transmit through the Services or the Services, or, your violation of any third party's rights, including, but not limited to, intellectual property rights, right of privacy, right of publicity, and confidentiality.

### **Termination**

If applicable, you may delete your Account and end your registration at any time, for any reason by sending an email to [info@notyet.tech](mailto:info@notyet.tech). We may terminate your use of the Services, your Account and/or registration for any or no reason at any time. You understand that termination of your agreement with us pursuant to these Terms of Use and your Account will not entitle you to any refund and may involve deletion of your information from our live databases as well as any content that you uploaded to the Services using such Account. YOU AGREE THAT WE WILL

NOT BE LIABLE TO YOU OR ANY OTHER PARTY FOR ANY TERMINATION OF YOUR ACCESS TO THE SERVICES OR DELETION OF YOUR ACCOUNT OR CONTENT UPLOADED BY YOU.

## **Dispute Resolution**

In the event of any dispute, claim, question or disagreement arising from or relating to this Agreement, or the relationship that results from this Agreement (a “Dispute”), the parties hereto shall use their best efforts to settle the Dispute. To this end, the parties shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties. If the parties do not reach such solution, then the Dispute shall be resolved by binding arbitration in Wilmington, Delaware, in accordance with the Commercial Arbitration Rules of the American Arbitration Association (the “AAA”), subject to the limitations of this section. This agreement to arbitrate will be specifically enforceable under the prevailing law of any court having jurisdiction. Notice of a demand for arbitration shall be filed in writing with the other party hereto and with the AAA. To the extent permitted by law, any Dispute under this Agreement must be filed within one year in an arbitration proceeding. The one-year period begins when the claim or notice of dispute first could be filed. If a claim or dispute is not filed within one year, it is permanently barred.

The parties agree that one (1) arbitrator shall arbitrate the Dispute. The arbitrator shall be selected by the joint agreement of the parties, but if they do not so agree within twenty (20) days after the date of the notice of a demand for arbitration referred to above, the selection shall be made pursuant to the Commercial Arbitration Rules of the AAA from the panels of business arbitrators maintained by the AAA. The decision of the arbitrator shall be made in writing, shall be final, judgment may be entered upon it in any court having jurisdiction thereof, and the decision shall not be subject to vacation, modification or appeal, except to the extent permitted by sections 10 and 11 of the Federal Arbitration Act, the terms of which sections the parties agree shall apply. You and we agree that (i) no arbitration proceeding whether a consumer or business dispute will be certified as a class action or proceed as a class action, or on a basis involving claims brought in a purported representative capacity on behalf of the general public, other customers or potential customers or persons similarly situated, and (ii) no arbitration proceeding shall be consolidated with, or joined in any way with, any other arbitration proceeding and the arbitrator may not otherwise preside over any form of a representative or class proceeding. WE AND YOU AGREE TO ARBITRATE A CONSUMER DISPUTE OR BUSINESS DISPUTE ON AN INDIVIDUAL BASIS AND NOT AS A CLASS ACTION OR OTHER REPRESENTATIVE ACTION, AND THE PARTIES EXPRESSLY WAIVE THEIR RIGHT TO FILE A CLASS ACTION, SEEK RELIEF ON A CLASS BASIS, OR PARTICIPATE IN A CLASS ACTION. Further, unless both you and we agree in writing otherwise, the arbitrator may not consolidate more than one person’s claims, and may not otherwise preside over any form of a representative or class proceeding. The expenses of arbitration, including reasonable attorneys’ fees and the fees and expenses of the arbitrator, shall be shared equally by the parties.

Either party may bring a claim related to intellectual property rights, or seek temporary and preliminary specific performance and injunctive relief, in any court of competent jurisdiction, without the posting of bond or other security.

YOU AND NOTYET AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. Further, unless both you and NotYet agree otherwise, the arbitrator may not consolidate more than one person's claims with your claims, and may not otherwise preside over any form of a representative or class proceeding. The arbitrator may award declaratory or injunctive relief only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that party's individual claim.

If the arbitration terms and conditions of this Section are found to be unenforceable, then (i) the entirety of this arbitration provision shall be null and void, but the remaining provisions of these Terms of Use shall remain in full force and effect, and (ii) exclusive jurisdiction and venue for any claims will be in state or federal courts located in and for Wilmington, Delaware.

### **Supplemental Terms Applicable to Providers**

These supplemental terms apply to Providers in addition to the other provisions of these Terms of Use. In the event of a conflict between the supplemental terms and any other terms herein, the supplemental terms shall prevail.

To be a healthcare provider using the Services (for purposes of this Section, "Provider" or "you") you must be a licensed physician, nurse practitioner, or healthcare professional in contract with NotYet, and must agree to comply with all laws, medical board rules, and other rules and regulations applicable to you as a Provider or otherwise. Your relationship with the Service users is directly between you and the patient. The patient will never have a physician-patient relationship with NotYet. NotYet does not practice medicine and offers no medical services. As set forth more fully below, Provider is solely responsible for all agreements, consents, notices, and other interactions with patients and other consumers. Without limiting the generality of the foregoing, Provider is solely responsible for all billings and collections from patients and other consumers, and NotYet shall have no liability whatsoever to Provider with respect to any amounts owed by any patient or other consumer to Provider.

NotYet does not provide any medical advice, legal advice, or representations in any way regarding any legal or medical issues associated with Provider, goods, or services offered by Provider, including but not limited to any compliance obligations or steps necessary to comply with any state or federal laws and regulations. Provider should seek legal counsel regarding any legal and compliance issues, and should not rely on any materials or content associated with the Services in determining Provider's compliance obligations under law. THE SERVICES ARE NOT MEANT TO SUBSTITUTE OR MODIFY YOUR PROFESSIONAL JUDGMENT IN ANY WAY.

Provider will use the Services only in accordance with applicable standards of good medical practice. While products such the Services can facilitate and improve the quality of service that Provider can offer patients, many factors, including but not limited to the provider/patient relationship can affect a patient outcome, and with intricate and interdependent technologies and complex decision-making it is often difficult or impossible to accurately determine what the factors were and in what proportion they affected an outcome. Provider shall be solely responsible for its use of the Services, and the provision of medical services to Provider's patients. In this regard, Provider releases NotYet and waives any and all potential claims against NotYet as a result of Provider's use of the Services, and the provision of services to Provider's patients.

## **Miscellaneous**

### *Governing Law and Jurisdiction*

All matters relating to the Services, and these Terms of Use and any dispute or claim arising therefrom or related thereto (in each case, including non-contractual disputes or claims), shall be governed by and construed in accordance with the laws of the State of Delaware regardless of your country of origin or where you access the Services, and notwithstanding of any conflicts of law principles and the United Nations Convention for the International Sale of Goods. The parties agree that any and all disputes, claims, or litigation arising from or related in any way to these Terms of Use shall be resolved exclusively by the courts in and for Wilmington, Delaware, and each party waives any objections against and agrees to submit to the personal jurisdiction of such state and federal courts, including objections or defenses based upon an inconvenient forum.

### *Notices*

You agree that we may provide you with notices, including those regarding changes to this agreement, by email to the address you provided at the time of registration or as changed in your Account profile on the Services.

### *Independent Contractors*

The parties intend that an independent contractor relationship will be created by these Terms of Use, and that no additional partnership, joint venture, employee, employer or other relationship is intended. You agree not to hold yourself out as in any way sponsored by, affiliated with, endorsed by, in partnership or venture with, nor as an employee or employer of us, any of our affiliates or service providers.

### *Application Support; Functionality*

All questions and requests relating to the Services support must be directed to NotYet. The Select Third Parties, as defined in Section 26, are not responsible for providing support for the application portions of the Services and may not be contacted for support. NotYet will use

commercially reasonable efforts to respond to questions and provide support. Please note that we may change or remove functionality and other features of the Services at any time, without notice.

### *Modified Devices and Operating Systems*

NotYet will have no liability for errors, unreliable operation, or other issues resulting from use of the Services on or in connection with rooted or jail broken devices or use on any mobile device that is not in conformance with the manufacturer's original specifications, including, but not limited to, use of modified versions of the operating system (collectively, "Modified Devices"). Use of the Services on Modified Devices will be at your sole and exclusive risk and liability.

### *No Liability for Select Third Parties*

You may be granted access to our products and services through a third party, including resellers and others who include our services and products as part of their own offerings (the "Reseller Third Parties"). Your wireless carrier, the manufacturer and retailer of your mobile device, the developer of the operating system for your mobile device, the operator of any application store, marketplace, or similar service through which you obtain the Services, and their respective affiliates, suppliers, and licensors, as well as the Reseller Third Parties, (collectively, the "Select Third Parties") are not parties to these Terms of Use and they do not own and are not responsible for the Services. NotYet, and not any Select Third Parties, is responsible for addressing any claims raised by you or any third party regarding the Services or your use or possession thereof, including, but not limited to, claims related to product liability, legal, or regulatory requirements, and consumer protection or similar legislation. You are responsible for complying with all application store and other applicable Select Third Parties' terms and conditions. YOU AGREE: (A) THE SELECT THIRD PARTIES DISCLAIM ALL WARRANTIES, EXPRESS AND IMPLIED, WITH RESPECT TO THE SERVICES, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF NON-INFRINGEMENT, TITLE, MERCHANTABILITY, QUIET ENJOYMENT, QUALITY OF INFORMATION, AND FITNESS FOR A PARTICULAR PURPOSE; (B) IN NO EVENT WILL THE SELECT THIRD PARTIES BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY DIRECT, INDIRECT, PUNITIVE, EXEMPLARY, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES (WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE) ARISING OUT OF THESE TERMS OF USE OR THE SERVICES, EVEN IF THEY HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES; AND (C) IN ANY EVENT, THE MAXIMUM LIABILITY OF ANY SELECT THIRD PARTY FOR ALL CLAIMS (WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE) OF EVERY KIND WILL IN NOT EXCEED FIVE DOLLARS (\$5.00); AND (IV) YOU WAIVE ANY AND ALL CLAIMS, NOW KNOWN OR LATER DISCOVERED, THAT YOU MAY HAVE AGAINST THE SELECT THIRD PARTIES ARISING OUT OF THE SERVICES, AND THESE TERMS OF USE. THE THIRD PARTIES ARE INTENDED THIRD PARTY BENEFICIARIES OF THESE TERMS OF USE, AND ARE CAPABLE OF DIRECTLY ENFORCING ITS TERMS. NOTHING CONTAINED IN THESE TERMS OF USE WILL BE CONSTRUED AS MODIFYING OR AMENDING ANY AGREEMENTS OR OTHER TERMS BETWEEN YOU

AND THE SELECT THIRD PARTIES WITH REGARD TO THEIR SUBJECT MATTER. In the event of any claim that the Services, or your possession and use of the Services infringes a third party's intellectual property rights, the Select Third Parties are not responsible for the investigation, defense, settlement, or discharge of the infringement claim.

Additionally, by using the Device, you agree to indemnify and hold harmless the underlying wireless carrier supplying services to NotYet, and its officers, employees, and agents against any and all claims, including without limitation claims for libel, slander, infringement of copyright, or personal injury or death, arising in any way directly or indirectly in connection with the use, failure to use, or inability to use the access telephone number associated with the Device.

### *Entire Agreement*

If you are a Provider, your use of the Services may be separately governed by an agreement between NotYet and your employer ("Customer Agreements"). In the event of a conflict between the Customer Agreement and any other agreement between NotYet and these Terms of Use, the Customer Agreement shall govern and control. Except for Customer Agreements, these Terms of Use, and our Privacy Policy you have consented to constitute the entire agreement between you and us with respect to the Services and supersede all prior or contemporaneous understandings and agreements, whether written or oral, with respect thereto. No failure to exercise, and no delay in exercising, on the part of you or us, any right or any power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right or power hereunder preclude further exercise of that or any other right hereunder. In the event of a conflict between these Terms of Use and any applicable purchase order or other terms, the terms of these Terms of Use shall govern. If any provision of these Terms of Use is illegal or unenforceable under applicable law, the remainder of the provision will be amended to achieve as closely as possible the effect of the original term and all other provisions of these Terms of Use will continue in full force and effect. You may not assign, delegate, or subcontract these Terms of Use without the prior, written permission of NotYet. The headings of sections and paragraphs in these Terms of Use are for convenience only and shall not affect its interpretation. For purposes of these Terms of Use, (a) the words "include," "includes," and "including" are deemed to be followed by the words "without limitation"; (b) the word "or" is not exclusive; and (c) the words "herein," "hereof," "hereby," "hereto," and "hereunder" refer to these Terms of Use as a whole.

### **USE PER FDA APPROVED LABELING**

The devices, systems and services described on the Services or related product materials are subject to United States laws governing the use and sale of such devices, systems and services. Nothing in these Services or related product materials is intended to constitute a claim or indication for clinical uses of NotYet's medical devices beyond those that have been cleared or approved by the U.S. Food and Drug Administration or any foregoing equivalent, as applicable.

**Your Questions and Concerns**

The Services is operated by NotYet. All other feedback, comments, requests for technical support and other communications relating to the Services should be directed to [info@notyet.tech](mailto:info@notyet.tech).

Thank you for visiting and using the Services.