

# Canary Telehealth Terms of Use and End-User License Agreement

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Effective Date: October 18, 2022

By installing and/or using the Application (as defined below), you acknowledge your agreement to be bound by these terms of use and end user license (“Terms”) and accept the restrictions, disclaimers and limitations set out below. Please review them carefully before installation/use. This is an agreement between you and Canary Telehealth, and not with Apple or Google. Apple or Google are not responsible for this Application or the content of the Application. If you do not accept these Terms, you are not permitted to use the Application and you must not download, access or use the Application.

The “Application” shall mean the software provided by Canary Telehealth to offer services related to Canary Telehealth, Canary Telehealth’s services and its partners’ services, to be used on Apple iOS or Android devices (and any upgrades from time to time and any other software or documentation which enables the use of the Application), including and utilizing the GenieMD Application including its mobile application and web portal. The Application is a product licensed to Canary Telehealth by GenieMD.

## 1. DATA PROTECTION

Any personal information you supply to Canary Telehealth when using the Application will be used by Canary Telehealth in accordance with its [Privacy Policy](#).

## 2. CANARY TELEHEALTH.COM

The Application allows you to access certain functionality available on Canary Telehealth.com (the “Website”). Such access will be governed by this Terms of Use.

## 3. PROPRIETARY RIGHTS AND LICENSE

All trademarks, copyright, database rights and other intellectual property rights of any nature in the Application together with the underlying software code are owned either directly by Canary Telehealth or by Canary Telehealth’s licensors.

Canary Telehealth hereby grants you a non-transferable, worldwide, non-exclusive, royalty-free revocable license to use the Application for your personal use in accordance with these Terms. Canary Telehealth grants you the right to use the Application only on iOS or Android products that you own or control, and as permitted by the Usage Rules set forth in the App Store or Google Play Terms of Service.

Except for the rights expressly granted above, these Terms transfer to you, including any related user, no right, title, or interest in the Application, or the content of the Application nor any copyright, patent, trademark, trade secret, or other intellectual property or proprietary right therein.

Canary Telehealth retains sole and exclusive title to all portions of the Application, and any copies thereof, and you, including any related users, hereby assign to Canary Telehealth all right, title, and interest in and to any modifications you or any related user makes to the Application, whether or not such modifications are permitted.

#### 4. CONDITIONS OF USE

You will not, nor allow third parties on your behalf to (i) make and distribute copies of the Application; (ii) attempt to copy, reproduce, alter, modify, reverse engineer, disassemble, decompile, transfer, exchange or translate the Application; (iii) create derivative works of the Application of any kind whatsoever; (iv) sell, license, sublicense, lease, rent or transfer to any third party whether for profit or without charge, any portion of the Application; (v) publish or otherwise communicate any review of, or information about, the performance of the Application to any third party without the prior written consent of Canary Telehealth; (vi) download, or otherwise use the Application in violation of any laws or regulations, including U.S. Department of Commerce Export Administration regulations and other applicable laws; or (vii) use the Application in connection with life support systems, human implantation, medical devices, or any application where failure or malfunction could lead to possible loss of life or catastrophic property damage.

You represent and warrant that you are not located in a country that is subject to a US Government embargo, or that has been designated by the US Government as a “terrorist supporting” country and you are not listed on any US Government list of prohibited or restricted parties.

The Application is currently made available to you free of charge. Canary Telehealth reserves the right to amend or withdraw the Application, or charge for the Application or service provided to you in accordance with these Terms, at any time and for any reason.

You acknowledge that the terms of agreement with your respective mobile network provider (“Mobile Provider”) will continue to apply when using the Application. As a result, you may be charged by the Mobile Provider for access to network connection services for the duration of the connection while accessing the Application or any such third-party charges as may arise. You accept responsibility for any such charges that arise.

Message frequency varies per user. Message and data rates may apply. Text HELP for assistance.

Text STOP to unsubscribe. Carriers are not liable for delayed or undelivered messages

If you are not the bill payer for the mobile telephone or handheld device being used to access the Application, you will be assumed to have received permission from the bill payer for using the Application.

#### 5. AVAILABILITY

This Application is available to handheld mobile devices running Apple iOS or Google Android.

Canary Telehealth will use reasonable efforts to make the Application available at all times.

However, you acknowledge the Application is provided over the internet and mobile networks and so the quality and availability of the Application may be affected by factors outside Canary Telehealth’s reasonable control.

Canary Telehealth and its subcontractors, do not accept any responsibility whatsoever for unavailability of the Application, or any difficulty or inability to download or access content or any other communication system failure which may result in the Application being unavailable.

Canary Telehealth will not be responsible for any support or maintenance for the Application.

GenieMD and its subcontractors will similarly not be responsible for any support or maintenance for the Application. Apple has no obligation whatsoever to furnish any maintenance and support services with respect to this Application.

## 6. SYSTEM REQUIREMENTS

In order to use the Application, you are required to have a compatible mobile telephone or handheld device, internet access, and the necessary minimum specifications "Software Requirements".

The Software Requirements are as follows: Apple iOS devices running iOS 7.0 or higher ; Language: English and Android devices running 4.3 or higher and Google Chrome.

The Application may be upgraded from time to time to add new functions and services.

## 7. TERMINATION

Canary Telehealth may terminate use of the Application at any time with or without prior notification by deactivating your username and password or suspending operation of the Application.

Upon any termination, (i) the rights and licenses granted to you herein shall terminate; and (ii) you must cease all use of the Application.

Canary Telehealth reserves the right to terminate its agreement with you, or to modify or terminate services and/or product offerings in connection with the Application, at any time without notice to you.

Termination between you and Canary Telehealth may only act to discontinue your personal access to the Application and such termination may not act to terminate any other contracts related to the Application between any other user and Canary Telehealth.

## 8. LIMITATION OF LIABILITY

In no event will Canary Telehealth, GenieMD, and their respective affiliates or subcontractors be liable to you or any other person for any direct, indirect, special, punitive, exemplary or consequential losses or damages of whatsoever kind arising out of your use of or access to (or inability to use or access) the Application, the content of the Application or any equipment furnished in connection therewith, including loss of profit or the like, whether or not in the contemplation of the parties, whether based on breach of contract, tort (including negligence), product liability or otherwise.

Neither Canary Telehealth, GenieMD, nor their subcontractors are liable to you for any damage or alteration to your equipment including but not limited to computer equipment, handheld device or mobile telephones as a result of the installation or use of the Application.

To the extent permitted by law, Canary Telehealth's, GenieMD's, and its subcontractors total maximum cumulative liability hereunder in connection with these Terms, whether arising under contract or otherwise, are limited to the fees received by Canary Telehealth under these Terms (if any), specifically relating to your use of the Application or product which is the subject of the claim.

**YOU ASSUME ALL RISK FOR SELECTION AND USE OF THE APPLICATION AND CONTENT PROVIDED THEREON. NEITHER CANARY TELEHEALTH, GENIEMD, THEIR SUBCONTRACTORS SHALL BE RESPONSIBLE FOR ANY ERRORS, MISSTATEMENTS, INACCURACIES OR OMISSIONS REGARDING CONTENT**

DELIVERED THROUGH THE APPLICATION OR ANY DELAYS IN OR INTERRUPTIONS OF SUCH DELIVERY.

YOU ACKNOWLEDGE THAT CANARY TELEHEALTH, GENIEMD, THEIR SUBCONTRACTORS: (I) HAS NO CONTROL OF OR RESPONSIBILITY FOR YOUR USE OF THE APPLICATION OR CONTENT PROVIDED THEREON; (II) HAS NO KNOWLEDGE OF THE SPECIFIC OR UNIQUE CIRCUMSTANCES UNDER WHICH THE APPLICATION OR CONTENT PROVIDED THEREON MAY BE USED BY YOU; (III) UNDERTAKES NO OBLIGATION TO SUPPLEMENT OR UPDATE CONTENT OF THE APPLICATION; AND (IV) HAS NO LIABILITY TO ANY PERSON FOR ANY DATA OR INFORMATION INPUT ON THE APPLICATION BY PERSONS OTHER THAN CANARY TELEHEALTH OR GENIEMD AND ITS SUBCONTRACTORS

TO THE GREATEST EXTENT PERMITTED BY LAW, CANARY TELEHEALTH, GENIEMD AND ITS SUBCONTRACTORS, AND THEIR RESPECTIVE AFFILIATES SHALL NOT BE LIABLE TO ANY PERSON (INCLUDING BUT NOT LIMITED TO YOU AND PERSONS TREATED BY OR ON BEHALF OF YOU) FOR, AND YOU AGREE TO INDEMNIFY AND HOLD CANARY TELEHEALTH, GENIE MD AND ITS SUBCONTRACTORS HARMLESS FROM ANY CLAIMS, LAWSUITS, PROCEEDINGS, COSTS, ATTORNEYS' FEES, DAMAGES OR OTHER LOSSES (COLLECTIVELY, "LOSSES") ARISING OUT OF OR RELATING TO, (I) YOUR USE OF THE APPLICATION OR CONTENT PROVIDED THEREON OR ANY EQUIPMENT FURNISHED IN CONNECTION THEREWITH; AND (II) ANY DATA OR INFORMATION INPUT ON THE APPLICATION BY YOU, IN ALL CASES INCLUDING BUT NOT LIMITED TO LOSSES FOR TORT, PERSONAL INJURY, MEDICAL MALPRACTICE OR PRODUCT LIABILITY.

IN NO EVENT SHALL CANARY TELEHEALTH, GENIEMD AND ITS SUBCONTRACTORS AND THEIR RESPECTIVE AFFILIATES BE LIABLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR INDIRECT DAMAGES, INCLUDING DAMAGES FOR LOSS OF PROFITS, LOSS OF BUSINESS, OR DOWN TIME, EVEN IF GENIEMD OR ITS SUBCONTRACTORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES

AS BETWEEN YOU AND CANARY TELEHEALTH, GENIEMD AND ITS SUBCONTRACTORS, YOU HEREBY ASSUME FULL RESPONSIBILITY FOR ENSURING THE APPROPRIATENESS OF USING AND RELYING UPON THE INFORMATION IN VIEW OF ALL ATTENDANT CIRCUMSTANCES, INDICATIONS, AND CONTRAINDICATIONS.

Apple is not responsible for addressing any claims by you or any third party relating to the Application or your possession and/or use of this Application, including but not limited to: (a) product liability claims; (b) any claim the Application fails to conform to any applicable legal or regulatory requirement; and (c) claims arising under consumer protection or similar legislation.

## 9. DISCLAIMER OF WARRANTIES

To the maximum extent permitted by law, Canary Telehealth, GenieMD and its subcontractors make no representation or warranty whatsoever, express or implied, including but not limited to representations or warranties regarding the accuracy or nature of the content of the Application, warranties of title, non-infringement, merchantability or fitness for a particular purpose. Apple is not responsible for the investigation, defense, settlement, or discharge of any third-party intellectual property infringement claim.

The Application and software are provided "as is" and "as available" without warranty of any kind. In addition, without limiting the foregoing, the Application has been designed for use in the United States only and covers the drug products used in practice in the United States.

Neither Canary Telehealth nor GenieMD and its subcontractors provide any clinical information, nor do Canary Telehealth, GenieMD or its subcontractors check for drugs not available for sale in the United States, clinical practice patterns outside the United States may differ substantially from information supplied by the Application. Neither Canary Telehealth nor GenieMD and its subcontractors warrant that uses outside the United States are appropriate.

You acknowledge that updates to the Application are at the sole discretion of Canary Telehealth, GenieMD, and/or its subcontractors. Canary Telehealth, GenieMD, and/or its contractors make no representation or warranties whatsoever, express or implied, with respect to the compatibility of the Application, or of future releases thereof, with any computer hardware or software, nor does Canary Telehealth, GenieMD, or its subcontractors represent or warrant the continuity of the features or the facilities provided by or through the Application as between various releases thereof.

Any warranties expressly provided herein do not apply if: (i) you alter, mishandle or improperly use, store or install all, or any part, of the Application, (ii) you store or install the Application on a computer system which fails to meet the specifications provided by Canary Telehealth, GenieMD or its subcontractors, or (iii) the breach of warranty arises out of or in connection with acts or omissions of persons other than Canary Telehealth and/or GenieMD and its subcontractors.

No salesperson or other representative of any party involved in the distribution of the Application (if any) is authorized to make any warranties with respect to the Application or the content of the Application, beyond those contained in these Terms. Oral statements do not constitute warranties, shall not be relied upon by you, and are not a part of these Terms.

In the event of any failure of the Application to conform to any applicable warranty, you may notify Apple, and Apple will refund the purchase price, if applicable, for the Application to you; and to the maximum extent permitted by applicable law, Apple will have no other warranty obligation whatsoever with respect to this Application.

## 10. FURTHER DISCLAIMER

Every effort has been made to ensure that the information provided in the Application is accurate, up-to-date and complete, but no guarantee is made to that effect, including with respect to any product descriptions, prices, or information concerning medical devices. In addition, the drug information contained in the Application may be time sensitive. Additional information on any product may be obtained from the manufacturer.

The Application does not endorse drugs or other products or services, diagnose any injury, illness, disease or other health condition, or recommend any treatment, therapy or health care provider. The Application is an informational resource only. You and your physicians and healthcare practitioners must use your/their own judgment in using the information provided.

The Application is not a substitute for the care provided by physicians and licensed healthcare practitioners and you are urged to consult with your physician(s) and/or healthcare practitioner(s) in all instances. The absence of a warning for a given drug or drug combination, or any other treatment, therapy or health care provider, in no way should be construed to indicate that the drug

or drug combination, or other treatment, therapy or health care provider, is safe, effective, qualified, or appropriate.

The Application is not offered or provided for the purpose of diagnosing, treating or prescribing for any injury, illness, disease or other health condition. Only physicians and other health care professionals may, within the scope of their respective licensure and qualifications, diagnose, treat or prescribe for injuries, illnesses, diseases and other health care conditions.

You should not use the Application or the information it provides to diagnose or to make treatment decisions for yourself or for others. Instead, the Application is offered to assist you to collect and organize health care information, to learn more about health care issues that relate to that information, and to communicate with your physician(s) and other health care providers more effectively.

The information made available to you through the Application, including but not limited to information regarding prescription drug and other treatment alternatives and possible drug interactions, is offered for informational purposes only.

While Canary Telehealth and GenieMD and its subcontractors have endeavored to make this information as complete and as useful as possible, Canary Telehealth, GenieMD and its subcontractors cannot assure that this information addresses every situation or every patient's needs.

The information the Application collects and reports regarding your medical history and/or physical condition is only a partial record, and is not a replacement for the medical and other records that are maintained by your physician(s) and other health care providers. Therefore, you should not act upon any of the information you receive through the Application without discussing the matter first with your physician(s) and other health care providers. You are strongly encouraged to discuss all questions about your health care with your physician(s) and other health care providers.

You expressly acknowledge and agree that neither Canary Telehealth, nor GenieMD or its subcontractors is responsible for the results of your decisions resulting from the use of the Application, including, but not limited to, your choosing to seek or not to seek professional medical care, or from choosing or not choosing a specific health care provider or type of provider, or from choosing or not choosing a specific treatment.

Canary Telehealth and Genie MD and its subcontractors do not assume any responsibility for any aspect of healthcare administered or not administered with the aid of information the Application provides.

## 11. GENERAL

If for any reason any provision of these Terms is determined to be invalid or unenforceable under any statute or rule of law by a court of competent jurisdiction, such provision shall be interpreted in order to give effect to such provision to the maximum extent permitted by law, and the remaining provisions shall continue in full force and effect.

These Terms shall be interpreted, construed, and governed by and in accordance with the laws of the United States. You irrevocably submit to the jurisdiction of the courts of the United States.

These Terms constitute the entire agreement between the parties with respect to the subject matter hereof and supersede all prior agreements, oral or written, and all other communications relating to the subject matter hereof.

Canary Telehealth may change these Terms from time to time by posting revised terms and conditions on its website, and all such changes will be effective when you next use the Application or after 7 days, whichever is sooner.

No agency, partnership, joint venture or employment relationship is created as a result of these Terms.

The failure of Canary Telehealth to enforce any part of these Terms shall not constitute a waiver of its right to later enforce that or any other part of these Terms.

The section headings in these Terms are for convenience only and shall not affect their interpretation.

These Terms are personal to you. The rights and obligations contained herein may not be assigned, transferred or sublicensed to any other party without the written consent of Canary Telehealth. Apple and Apple's subsidiaries are third party beneficiaries of these Terms, and, upon your acceptance, Apple as a third-party beneficiary thereof will have the right (and will be deemed to have accepted the right) to enforce these Terms against you.

If you have any questions in relation to these Terms, or complaints or claims with respect to the Application please contact Canary Telehealth, Inc. at 3151 S Michigan Ave, Chicago, IL 60616 USA  
Tel: 312-780-0812 [BHCoordinator@canarytelehealth.com](mailto:BHCoordinator@canarytelehealth.com)

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