

## **Terms of Service**

**Last Updated: May 24, 2017**

Welcome to Sempre Health! At Sempre Health, Inc. ("**Sempre Health**"), our mission is to empower individuals to take control of their personal health. We do this through our prescription benefits program (the "**Program**") which provides prescription reminders and discounts when you pick up your prescriptions on time.

Please read these Terms of Service (the "**Terms**") and our Privacy Policy (<https://www.semprehealth.com/privacy>) carefully because they govern your use of our website located at <https://semprehealth.com> (the "**Website**") and our Program. To make these Terms easier to read, the Website and our Program are collectively called the "**Services**."

### **Agreement to Terms**

By using our Services, you agree to be bound by these Terms. If you don't agree to be bound by these Terms, do not use the Services.

**WHEN YOU AGREE TO THESE TERMS, YOU AGREE TO RESOLVE YOUR DISPUTES WITH US ON AN INDIVIDUAL BASIS THROUGH FINAL AND BINDING ARBITRATION, UNLESS YOU OPT-OUT OF ARBITRATION WITHIN 30 DAYS OR THE DISPUTE IS EXCLUDED FROM ARBITRATION, AS FURTHER DESCRIBED IN THE DISPUTE RESOLUTION SECTION BELOW. PLEASE REVIEW THE DISPUTE RESOLUTION SECTION BELOW FOR DETAILS ON ARBITRATION AND OPTING-OUT.**

### **Privacy Policy**

Please refer to our Privacy Policy (<https://www.semprehealth.com/privacy>) for information on how we collect, use and disclose information from our users. You acknowledge and agree that your use of the Services is subject to our Privacy Policy.

### **Changes to Terms or Services**

We may modify the Terms at any time, in our sole discretion. If we do so, we'll let you know by posting the modified Terms on the Website or by communicating those changes to you via SMS or email, according to the Program you have enrolled in. It's important that you review the Terms whenever we modify them because if you continue to use the Services after we have posted or communicated such modified Terms, you are indicating to us that you agree to be bound by the modified Terms. If you don't agree to be bound by the modified Terms, then you may not use the Services anymore. Because our Services are evolving over time we may change or discontinue all or any part of the Services, at any time and without notice, at our sole discretion.

### **Enrollment**

You may use the Services only if you are 18 years or older and are not barred from using the Services under applicable law. If you want to participate in the Program you'll have to enroll in the program via email or SMS and become a user ("**User**").

### **How the Program Works**

#### Reminders & Discounts

The Program enables you to receive prescription reminders and offers you discounts when you pick up your prescriptions on time. Once you enroll in the Program, you will receive a discount ID via text message or email, as applicable, to present to your pharmacy. Once your discount ID has been verified by the pharmacy, you will be eligible to receive discounts each time you pick up your applicable prescription(s) on time.

### Health Information

By enrolling in the Program, you acknowledge and agree that Sempre Health may receive certain health information regarding you, including, without limitation, claims data, information regarding the medications you take or other similar personal health information (collectively, “**Health Information**”) from you or your health insurance provider (“**Insurer**”) in order to administer the program. Sempre Health may collect and store Health Information received from you or your Insurer and maintain that information on your behalf and on behalf of your Insurers.

If you cancel your enrollment, you acknowledge that Sempre Health may continue to retain your Health Information as required by any state or federal law regarding retention of medical records or at the request of your Insurers, in connection with the services Sempre Health provides such Insurers.

### Usage Information

By enrolling in the Program, you hereby grant Sempre Health permission to collect and store information regarding your usage of the Program, including, without limitation, when you pick up prescriptions, the amounts you pay for a prescription, your responses to Messages, your responses to surveys and any other usage information (collectively, “**Usage Information**”).

### **De-Identification**

You acknowledge and agree that Sempre Health may use your Health Information and Usage Information to create de-identified or aggregated data that does not identify you (“**De-Identified Data**”), in a manner that complies with the Health Insurance Portability and accountability Act of 1996. You acknowledge and agree that Sempre Health owns such De-Identified Data, and may use and share it for its business purposes, including research and analysis purposes, to improve the Services or to promote the Services.

### **Program Messages**

As part of the Program, you may receive notifications, alerts or other types of messages via text message or email (“**Messages**”). You can opt out of these Messages (with the exception of infrequent, important service announcements and administrative messages) by replying “STOP” to a text message or following the unsubscribe instructions provided in the e-mail you receive, as applicable. Please be aware that third party messaging fees may occur for some of the Messages depending on the message plan you have with your wireless carrier.

**If you provide your cellular phone number to Sempre Health (either online or via text message) to enroll in the program and agree to receive communications from Sempre Health, you specifically authorize Sempre Health to send text messages or calls to your phone. You are not required to consent to receive text messages or calls as a condition of filling your prescriptions and may opt out of such messages. You can opt out of receiving text messages by responding “STOP” to any text message you receive from Sempre Health.**

### **Content and Content Rights**

For purposes of these Terms: “**Content**” means text, graphics, images, music, software, audio, video, works of authorship of any kind, and information or other materials that are posted, generated, provided or otherwise made available through the Services.

Sempre Health and its licensors exclusively own all right, title and interest in and to the Services and Content, including all associated intellectual property rights. You acknowledge that the Services and Content are protected by copyright, trademark, and other laws of the United States and foreign countries. You agree not to remove, alter or obscure any copyright, trademark, service mark or other proprietary rights notices incorporated in or accompanying the Services or Content.

Subject to your compliance with these Terms, Sempre Health grants you a limited, non-exclusive, non-transferable, non-sublicensable license to view and use the Content solely in connection with your permitted use of the Services and solely for your personal and non-commercial purposes.

### **General Prohibitions and Sempre Health’s Enforcement Rights**

You agree not to do any of the following:

- Use, display, mirror or frame the Services or any individual element within the Services, Sempre Health’s name, any Sempre Health trademark, logo or other proprietary information, or the layout and design of any page or form contained on a page, without Sempre Health’s express written consent;
- Access, tamper with, or use non-public areas of the Services, Sempre Health’s computer systems, or the technical delivery systems of Sempre Health’s providers;
- Attempt to probe, scan or test the vulnerability of any Sempre Health system or network or breach any security or authentication measures;
- Avoid, bypass, remove, deactivate, impair, descramble or otherwise circumvent any technological measure implemented by Sempre Health or any of Sempre Health’s providers or any other third party (including another user) to protect the Services or Content;
- Attempt to access or search the Services or Content or download Content from the Services through the use of any engine, software, tool, agent, device or mechanism (including spiders, robots, crawlers, data mining tools or the like) other than the software and/or search agents provided by Sempre Health or other generally available third-party web browsers;
- Use the Services or Content, or any portion thereof, for any commercial purpose or for the benefit of any third party or in any manner not permitted by these Terms;
- Attempt to decipher, decompile, disassemble or reverse engineer any of the software used to provide the Services or Content;
- Interfere with, or attempt to interfere with, the access of any user, host or network, including, without limitation, sending a virus, overloading, flooding, spamming, or mail-bombing the Services;
- Impersonate or misrepresent your affiliation with any person or entity;
- Violate any applicable law or regulation; or
- Encourage or enable any other individual to do any of the foregoing.

We have the right to investigate violations of these Terms or conduct that affects the Services. We may also consult and cooperate with law enforcement authorities to prosecute users who violate the law.

### **Links to Third Party Websites or Resources**

The Services may contain links to third-party websites or resources. We provide these links only as a convenience and are not responsible for the content, products or services on or available from those websites or resources or links displayed on such websites. You acknowledge sole responsibility for and assume all risk arising from, your use of any third-party websites or resources.

### **Termination**

We may terminate your access to and use of the Services, at our sole discretion, at any time and without notice to you. You may cancel your enrollment at any time by replying “STOP” to a text message, following the unsubscribe instructions provided in the e-mail you receive, as applicable, or sending an email to us at support@semprehealth.com. Upon termination, we may retain Health Information, Usage Information and De-identification as described above.

Upon any termination, discontinuation or cancellation of Services or your enrollment in the Program, the following provisions will survive: “Content and Content Rights,” “Termination,” “Warranty Disclaimers,” “Indemnity,” “Limitation of Liability,” “Dispute Resolution,” “General Terms” and “Feedback.”

### **Warranty Disclaimers**

THE SERVICES AND CONTENT ARE PROVIDED “AS IS,” WITHOUT WARRANTY OF ANY KIND. WITHOUT LIMITING THE FOREGOING, WE EXPLICITLY DISCLAIM ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUIET ENJOYMENT OR NON-INFRINGEMENT, AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE. We make no warranty that the Services will meet your requirements or be available on an uninterrupted, secure, or error-free basis. We make no warranty regarding the quality, accuracy, timeliness, truthfulness, completeness or reliability of any Content.

IN ADDITION, YOU UNDERSTAND AND AGREE THAT WE DO NOT OFFER MEDICAL ADVICE OR DIAGNOSES OR ENGAGE IN THE PRACTICE OF MEDICINE. THE SERVICES ARE NOT INTENDED TO BE, AND DO NOT CONSTITUTE, A SUBSTITUTE FOR PROFESSIONAL MEDICAL ADVICE, DIAGNOSIS OR TREATMENT AND ARE OFFERED FOR INFORMATIONAL PURPOSES ONLY. YOU SPECIFICALLY ACKNOWLEDGE AND AGREE THAT WE ARE NOT RESPONSIBLE FOR ANY HEALTHCARE OR RELATED DECISIONS MADE BY YOU, YOUR HEALTHCARE PROVIDER, OR YOUR INSURER BASED UPON DATA COLLECTED, TRANSMITTED OR DISPLAYED BY OR ON THE SERVICES, WHETHER SUCH DATA IS ACCURATE OR INACCURATE.

### **Indemnity**

You will indemnify and hold harmless Sempre Health and its officers, directors, employee and agents, from and against any claims, disputes, demands, liabilities, damages, losses, and costs and expenses, including, without limitation, reasonable legal and accounting fees arising out of or in any way connected with (i) your access to or use of the Services or Content or (ii) your violation of these Terms.

### **Limitation of Liability**

NEITHER SEMPRE HEALTH NOR ANY OTHER PARTY INVOLVED IN CREATING, PRODUCING, OR DELIVERING THE SERVICES OR CONTENT WILL BE LIABLE FOR ANY INCIDENTAL, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS, LOSS OF DATA OR GOODWILL, SERVICE INTERRUPTION, COMPUTER DAMAGE OR SYSTEM FAILURE OR THE COST OF SUBSTITUTE SERVICES ARISING OUT OF OR IN CONNECTION WITH THESE TERMS OR FROM THE USE OF OR INABILITY TO USE THE SERVICES OR CONTENT, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR ANY OTHER LEGAL THEORY, AND WHETHER OR NOT SEMPRE HEALTH HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGE, EVEN IF A LIMITED REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, SO THE ABOVE LIMITATION MAY NOT APPLY TO YOU.

IN NO EVENT WILL SEMPRE HEALTH’S TOTAL LIABILITY ARISING OUT OF OR IN CONNECTION WITH THESE TERMS OR FROM THE USE OF OR INABILITY TO USE THE SERVICES OR CONTENT EXCEED ONE HUNDRED DOLLARS (\$100).

THE EXCLUSIONS AND LIMITATIONS OF DAMAGES SET FORTH ABOVE ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN SEMPRE HEALTH AND YOU.

### **Dispute Resolution**

Our goal is to provide you with great service, so we’ll try our best to resolve any disagreements that you have with us. **If we can’t, then you and we both agree to resolve disputes related to your use of the Services or**

**these Terms (each, a “Claim”) in binding arbitration instead of court**, except that a Claim may be brought in small claims court if it qualifies for it. You and we also agree that either party may bring suit in court to enjoin the infringement or other misuse of intellectual property rights.

- What is arbitration? Arbitration does not involve a judge or jury. Instead, a neutral person (the “**arbitrator**”) hears each party’s side of the dispute, and makes a decision that is finally binding on both parties. The arbitrator can award the same relief as a court could award, including monetary damages. While court review of an arbitration award is limited, if a party fails to comply with the arbitrator’s decision, then the other party can have the arbitration decision enforced by a court. If for any reason a Claim proceeds in court rather than in arbitration, **you and we each waive any right to a jury trial.**
- Can a Claim be part of a class action or similar proceeding? No. You agree to resolve your Claims with us solely on an individual basis, and not as part of a class, representative or consolidated action. We agree to do the same.
- What rules apply in the arbitration? The arbitration will be conducted under the American Arbitration Association (“AAA”) Consumer Arbitration Rules (the “AAA Rules”). The AAA Rules are available at [www.adr.org](http://www.adr.org) or by calling 1-800-778-7879.
- How will the arbitration be conducted? How much does it cost? The arbitration will be conducted by the AAA or a comparable arbitration body in the event the AAA is unable to conduct the arbitration. Payment of all filing, administration and arbitrator fees will be governed by the AAA Rules. Unless the arbitrator finds your Claim frivolous, we’ll pay for all filing, administration and arbitrator fees if your Claim is for less than \$10,000, and we won’t seek our attorneys’ fees and costs if we prevail in the arbitration. The arbitration may be conducted in writing, remotely (e.g., by videoconference) or in-person in the county where you live (or at some other location that we both agree to).
- How do I start an arbitration proceeding? To begin an arbitration proceeding against us, send a letter requesting arbitration and describing your Claim to [support@semprehealth.com](mailto:support@semprehealth.com), (415) 792-1070, or 333 Bryant Street Suite 210 San Francisco, CA 94107. If we request arbitration against you, we will give you notice at the email address or street address you provided.
- **INSTRUCTIONS FOR OPTING-OUT OF ARBITRATION:** If you don’t want to agree to arbitrate your Claims as explained above, then you can opt-out of this arbitration agreement by notifying us of your decision in writing at [support@semprehealth.com](mailto:support@semprehealth.com), (415) 792-1070, or 333 Bryant Street Suite 210 San Francisco, CA 94107. You must opt-out within **30 days** of the date you first agree to these Terms or any updated Terms.

This Dispute Resolution section only applies to Claims between us and individual consumers, and is governed by The Federal Arbitration Act.

### **Governing Law.**

These Terms are governed by the laws of the State of California without regard to its conflict of laws provisions.

### **Choice of Forum.**

The exclusive jurisdiction for all Claims that are not subject to arbitration, including any Claims brought on behalf of a company or other legal entity, will be the state and federal courts located in the Northern District of California, and you and Client each waive any objection to jurisdiction and venue in such courts.

## **General Terms**

These Terms constitute the entire and exclusive understanding and agreement between Sempre Health and you regarding the Services and Content, and these Terms supersede and replace any and all prior oral or written understandings or agreements between Sempre Health and you regarding the Services and Content. If any provision of these Terms is held invalid or unenforceable (either by an arbitrator or by court of competent jurisdiction, as applicable), that provision will be enforced to the maximum extent permissible and the other provisions of these Terms will remain in full force and effect. You may not assign or transfer these Terms, by operation of law or otherwise, without Sempre Health's prior written consent. Any attempt by you to assign or transfer these Terms, without such consent, will be null. Sempre Health may freely assign or transfer these Terms without restriction. Subject to the foregoing, these Terms will bind and inure to the benefit of the parties, their successors and permitted assigns.

Any notices or other communications provided by Sempre Health under these Terms, including those regarding modifications to these Terms, will be given: (i) via email or text message; or (ii) by posting to the Website. For notices made by email or text message, the date of receipt will be deemed the date on which such notice is transmitted.

Sempre Health's failure to enforce any right or provision of these Terms will not be considered a waiver of such right or provision. The waiver of any such right or provision will be effective only if in writing and signed by a duly authorized representative of Sempre Health. Except as expressly set forth in these Terms, the exercise by either party of any of its remedies under these Terms will be without prejudice to its other remedies under these Terms or otherwise.

## **Feedback**

We welcome feedback, comments and suggestions for improvements to the Services ("**Feedback**"). You can submit Feedback by emailing us at [support@semprehealth.com](mailto:support@semprehealth.com). You grant to us a non-exclusive, worldwide, perpetual, irrevocable, fully-paid, royalty-free, sublicensable and transferable license under any and all intellectual property rights that you own or control to use, copy, modify, create derivative works based upon and otherwise exploit the Feedback for any purpose.

## **Contact Information**

If you have any questions about these Terms or the Services, please contact Sempre Health at [support@semprehealth.com](mailto:support@semprehealth.com).