

## Terms and Conditions of Use

You hereby agree that by registering, accessing or using our Services (as defined below) through our websites located at <https://oncopower.org/>, <https://www.oncopower.com> and <https://www.kardiopower.org/> and (“Site” or “Sites”), you are a designated “User” and you are agreeing to enter into a legally binding contract with Witty Health Inc. (“WITTY”). This TERMS AND CONDITIONS OF USE (the “Agreement”) describes the User’s use of the Services (as defined below) that is the basis of the User’s account (the “Account”) with WITTY. The terms “You” or “Your” shall mean the User. The terms “We”, “Us” or “Our” shall mean WITTY. As all of the terms of this Agreement are important, this Agreement should be reviewed closely by the User.

### **1. Scope of Agreement, Acceptance, and Changes.**

**1.1 Scope.** This Agreement applies to all content, applications, goods, and services that allow the User to chat, collaborate, stream, download, upload, view or use content that is available on the Site (the “Services”). The Services may be accessed via the Internet from a personal computer or mobile device, each as authorized by WITTY (each an “Authorized Device”).

**1.2 Acceptance.** By accessing or using the Services, You are agreeing to abide by this Agreement without modification. If You do not agree to these terms, You may not use the Services. As a condition to using the Services, you will be required to register with WITTY using your email address or other user ID and password chosen by you. You shall provide WITTY with accurate, complete, and updated registration information. WITTY reserves the right to refuse registration or cancel a registration in its sole discretion. You grant us and all other persons or entities involved in the operation of the Services the right to transmit, monitor, retrieve, store, and use your related registration information in connection with the operation of the Services.

**1.3 Changes.** WITTY may amend this Agreement at will. If we do, we will notify You, either through the user interface, in an email notification, or through other reasonable means, thirty (30) days prior to the effective date. Your use of the Services after the effective date will be Your consent to the changed terms. If You do not agree to the changes, You must stop using the Services by the effective date and cancel any paid Services by following the instructions in this Agreement. Otherwise, the new terms of the Agreement will apply to You.

**1.4 Users Account.** You are solely responsible for all activity that occurs under your Account and shall be responsible for maintaining the confidentiality of your password. You shall never use another user’s account or allow any third party to use yours. You will immediately notify WITTY in writing of any unauthorized use of your account, or other account related security breach of which you are aware. You agree that You are responsible for the billable activity of Your Account and it is Your responsibility to make sure You are aware of the responsibilities outlined in this Agreement. WITTY may cancel or suspend services if it reasonably believes the User is in violation of this Agreement. You acknowledge and accept that it is Your responsibility to protect Your Account. You represent and warrant to WITTY that:

**FAILURE TO PROTECT YOUR HARDWARE AND SECURITY CREDENTIALS MAY ALLOW AN UNAUTHORIZED PARTY TO ACCESS THE SERVICE. ALL USES OF THE SERVICE THROUGH YOUR SECURITY CREDENTIALS WILL BE DEEMED TO BE USES AUTHORIZED BY YOU AND BE BINDING UPON YOU. YOU ASSUME THE ENTIRE RISK FOR THE UNAUTHORIZED USE OF YOUR SECURITY CREDENTIALS. YOU AGREE TO (i) EXERCISE RESPONSIBLE BEHAVIOR WHEN USING THE SERVICE, (ii) FOLLOW THE INSTRUCTIONS AND RECOMMENDATIONS THAT WITTY PROVIDES YOU WITH RESPECT TO THE SERVICE AND (iii) USE MAXIMUM CAUTION IN PROTECTING YOUR HARDWARE AND SECURITY CREDENTIALS FROM UNAUTHORIZED ACCESS. YOU AGREE TO NOTIFY WITTY IMMEDIATELY IF YOU BECOME AWARE OF ANY LOSS OR THEFT OF, OR ANY UNAUTHORIZED USE OF THE SERVICE OR YOUR SECURITY CREDENTIALS.**

**1.5 Service Improvements.** We continuously work to improve the Services and may change or deprecate the Services as needed. We may release the Services or their features in a beta version, which may not work correctly or in the same way the final version may work. We may, among other things: (i) restrict or limit access to

the Services; (ii) retrieve information from Authorized Device(s) and (iii) upgrade, modify, withdraw, suspend, or discontinue Services from time to time without notice as needed.

**1.6 Unrelated Third-Party Services or content.** Certain unrelated third-party applications, content and services that are available in or through the Services (“Third-Party Services”) may provide separate or additional agreement terms, privacy policies and other conditions that govern the use of those Third-Party Services (collectively “Additional Terms”). WITTY does not license any intellectual property to the User as part of any Third-Party Services made available through the Services, and we are not responsible, unless otherwise required by law, for: (a) the Third-Party Services; (b) User’s use of the Third-Party Services; (c) the content of the Third-Party Services; (d) customer support for the Third-Party Services; or (e) any warranties or claims relating to the Third-Party Services.

**1.7 Code of Conduct.** You agree to the following code of conduct. You must not:

A. Use or attempt to use the Services (i) for any unlawful, unauthorized, fraudulent or malicious purpose, or which would violate any applicable local, state, national or international law; or (ii) that could damage, disable, overburden, or impair the Services (or any network or Authorized Device connected to the Services); or (iii) interfere with any other party’s use and enjoyment of the Site or Services, or (iv) to gain unauthorized access to any other accounts, computer systems or networks connected to any server or systems through hacking, password mining or any other means, or (v) to access systems, data or information not intended by WITTY to be made accessible to an User, or (vi) attempt to obtain any materials or information through any means not intentionally made available by WITTY, or (vii) any use other than the business purpose for which it was intended.

B. Create a false identity or impersonate any person or entity, including, without limitation, any WITTY representative; or falsely state or otherwise misrepresent your affiliation with a person or entity; or use the Services to harm, threaten, or harass another person, organization, or WITTY;

C. Use the Site’s interactive communication features in a manner that adversely affects the Services to other users;

D. Delete any legal notices, proprietary designations, author attributions, or labels that you upload to any interactive communication feature; or modify, delete or revise any material posted by other User, person or entity;

E. Upload or transmit any unsolicited advertising, promotional materials, “junk mail,” “spam,” “chain letters,” “pyramid schemes” or any other form of solicitation, commercial or otherwise; or upload or transmit any message, information, data, text, software or images, or other content that is unlawful, harmful, threatening, abusive, harassing, tortious, defamatory, vulgar, obscene, or libelous, or that may invade another’s right of privacy or publicity;

F. Register, subscribe, attempt to register, attempt to subscribe, unsubscribe, or attempt to unsubscribe, any party for any Services if you are not expressly authorized by such party to do so;

G. Upload or transmit any material that you do not have a right to reproduce, display or transmit under any law or under contractual or fiduciary relationships, including any material that infringes any patent, trademark, service mark, trade secret, copyright or other proprietary rights of any party; or upload files that contain viruses, trojan horses, worms, time bombs, cancel-bots, corrupted files, or any other similar software or programs that may damage the operation of another’s computer or property of another;

H. Create or share any User Content (as defined below) that facilitates, promotes or instructs others on: illegal activity, piracy of software, music, art, and other copyrighted, trademarked, or patented materials or trade secrets; illegal online pharmacies, illegal drugs or consumption of illegal drugs, terrorist threats or activities, identity theft; how to make bombs, weapons or drugs, or solicits involvement in behavior that is violent or illegal under applicable laws;

I. Assign, resell, or redistribute any part of the Services or access to the Services, including the sale or purchase of an Account without the written consent of WITTY;

J. Share Your Account password or otherwise authorize a third party to access or use the Services on Your behalf unless we provide an approved mechanism;

K. Enable unauthorized third-party applications to access the Services;

L. Use or attempt to use any unauthorized means to modify, reroute, or gain access to the Services or probe, scan, test the vulnerability of or breach the authentication measures of the Site or any related networks or systems;

M. Collect, copy or scrape date, content or information about the Services or others from the Site, including e-mail addresses or cheat, tamper, or fraudulently manipulate the Services in any way, including using any automated or manual process or service (such as a bot, robot, a spider, scraper, periodic caching of information stored by WITTY, or meta-searching) to access or use the Services; WITTY reserves the right to take whatever lawful actions it may deem appropriate in response to actual or suspected violations of the foregoing, including, without limitation, the suspension or termination of the user's access and/or account.

N. Obtain (or try to obtain) any data from the Services or related hardware, except the data we intend to make available to You;

O. Use the Services or related hardware to design, develop, or update unauthorized software;

P. Use unauthorized software or hardware to access the Services or modify an Authorized Device in any unauthorized way (e.g., through unauthorized repairs, unauthorized upgrades, or unauthorized downloads). You agree that we have the right to send data, applications or other content to any software or hardware that You are using to access the Services for the purpose of detecting an unauthorized modification and/or disabling the modified device;

Q. Attempt to disassemble, decompile, create derivative works of, reverse engineer, modify, further sublicense, distribute, or use for other purposes the Services, any game, application, or other content available or accessible through the Services, or any hardware associated with the Services or with an Authorized Device. If You do, we may cancel Your Account and Your ability to access the Services and pursue other legal remedies. We may take any legal action we deem appropriate against Users who violate our systems or network security, this Agreement or any additional terms incorporated or referenced in it. Such Users may also be subject to criminal or civil liability. WITTY may cooperate with legal authorities and/or third parties in the investigation of any suspected or alleged crime or civil wrong. Except as may be expressly limited by the [Privacy Policy](#), WITTY reserves the right at all times to disclose any information as required by Law after first giving You the opportunity to seek a protective order or motion to quash, unless prohibited by law.

**1.8 Email Anti-Spam Policy** - You agree not to use the Services to send unsolicited email. Violations of any part of the CAN-SPAM Act by the User may result in immediate suspension or cancellation of Your Account.

## **2. Physicians, Patients and Collaboration.**

**2.1 Physicians and Disclosures.** All User physicians, physician groups, advanced practice registered nurses, and hospitals (collectively, known as the "Physician(s)") who use the Services must hold professional licenses issued by the professional licensing boards in the states where they practice. You can report a complaint relating to the care provided by a User Physician by contacting the professional licensing board in the state where the care was received. You can find the contact information for each of the state professional licensing boards governing medicine on the Federation of State Medical Boards website at <http://www.fsmb.org/state-medical-boards/contacts>. Any clinical records created and stored on the Site as a result of Your use of the Services will be securely maintained by WITTY as required under state and federal law.

**2.2 Physician Services.** User Physicians who use the Services and deliver care to patients through the Services are independent professionals. WITTY does not practice medicine and does not interfere with the User Physician's practice of medicine, each of whom is responsible for his or her services and compliance with the requirements applicable to his or her profession and license. Neither WITTY nor any third parties who promote the Services or provide you with a link to the Services shall be liable for any professional advice you obtain from a User Physician via the Services. None of the Site content (other than information you receive from a User Physician) should be considered medical advice or an endorsement, representation or warranty that any particular medication or treatment is safe, appropriate, or effective for you.

**2.3 Patient to Physician Collaboration.** IF YOU ARE A PATIENT USING THE SITE FOR PATIENT TO PHYSICIAN COLLABORATION AND THINK YOU MAY HAVE A MEDICAL EMERGENCY, IMMEDIATELY CALL YOUR DOCTOR OR DIAL 911. Medical services provided by User Physicians through this Site are typically remote diagnostic consultations and may include one-one virtual video consultations and remote patient monitoring through customizable applications (“APPS”) through an Authorized Device (collectively, “Telemedicine”). User Physicians providing Telemedicine may not have the same information that would normally be available during an in-person visit with a patient. There are important aspects of the practice of medicine that sometimes require a physician to personally examine and observe the condition of the patient. A physician that cannot personally visit with a patient may not be aware of important facts that are only obtainable by an in-person visit, and any diagnosis made through remote observation is limited by the nature and amount of information available to the physician. You acknowledge and agree that you understand the limitations of the remote diagnostic and treatment options provided by User Physicians through the Services, and you agree that you assume all the risk of these limitations. It is strongly advised that you discuss any consultation with your primary care physician as well. If you engage in the Services you agree that you assume the risk of these limitations, and you understand that no warranty or guarantee has been made to you by WITTY regarding your diagnosis or the success of your treatment provided by User Physicians on the Site. While we take steps to authenticate all User Physicians qualifications, we cannot guarantee that every User Physicians on the Service is a qualified or a licensed physician.

**2.4 Physician to Physician Collaboration.** Physician to physician collaboration is an important part of the Services, including case study publications and the reviews of treatment protocols. However, the transmission, storing, review or receipt of confidential patient information (“Patient Information”) to the Site and the Services without the patient’s consent are subject to these additional terms. You are responsible for using the tools provided in the Services and on the Site to secure the patient’s consent to transmit their Patient Information. Local, State and Federal laws, as well as ethical and licensure requirements of Your profession may impose obligations with respect to patient confidentiality that may limit the ability of physicians, health care providers, and persons acting on their behalf, to make use of certain Patient Information or to transmit certain information to third parties. You represent and warrant that You will, at all times during the term of this Agreement and thereafter, comply with all laws directly or indirectly applicable to You that may now or hereafter govern the gathering, use, transmission, processing, receipt, reporting, disclosure, maintenance, and storage of the Patient Information, and use Your best efforts to cause all persons or entities under Your direction or control to comply with such laws. You are, at all times during the term of this Agreement and thereafter, solely responsible for obtaining and maintaining all patient consents, if applicable, and all other legally necessary consents or permissions required or advisable to disclose, process, retrieve, transmit, and view the Patient Information You transmit, store, or receive in connection with the Services and any third party site. You agree that WITTY's licensors and licensees, and all other persons or entities involved in the operation of the Services and functionalities provided through the Site, have the right to monitor, retrieve, store, review and use Patient Information, if applicable, in connection with the operation or use such Materials, and are acting on Your behalf in transmitting Patient Information. WE CANNOT AND DO NOT ASSUME ANY RESPONSIBILITY FOR YOUR USE OR MISUSE OF PATIENT INFORMATION OR OTHER INFORMATION TRANSMITTED, MONITORED, STORED OR RECEIVED WHILE USING THE SITE OR THE MATERIALS. WE RESERVE THE RIGHT TO AMEND OR DELETE ANY MATERIAL (ALONG WITH THE RIGHT TO REVOKE ANY USER OR RESTRICT THE USER’S ACCESS TO THE SERVICES) THAT IN OUR SOLE DISCRETION VIOLATES THE ABOVE.

### **3. User Content.**

**3.1 User Content.** The Services may provide you with the ability to message and share information with other Users, as well as upload, submit, disclose, distribute or otherwise post content, videos, audio clips, written forum comments, data, text, photographs, software, scripts, graphics, works of authorship or other information to the Services (the “User Content”). If You share User Content in public areas of the Services or in shared areas available to others You have chosen, then WITTY and anyone You have shared User Content with may use that User Content. User Content that you share on posts, blogs, chats, etc., may be seen by other Users or others not on the Services. Where settings are available, WITTY will honor the choices you make about who can see your User Content. Unless WITTY has agreed with you through a separate agreement, we will not pay You for Your User Content. We may remove Your User Content from the Services at any time and for any reason, including if: (i) You breach this Agreement; (ii) the User Content exceeds limits on storage or file size; (iii) the User Content is provided in an attempt to manipulate rankings; or (iv) we cancel or suspend the Services.

**3.2 Ownership and License.** We do not own, nor do we claim ownership over Your User Content. You hereby grant WITTY a worldwide, non-exclusive, perpetual, irrevocable, royalty-free, fully paid, sub-licensable and transferable license to use, modify, reproduce, distribute, prepare derivative works of, display, publish, publicly perform, and otherwise fully exploit (“Use”) the User Content in connection with the Services and WITTY’s (and its successors and assigns) business, including without limitation for promoting and redistributing part or all of the Services (and derivative works thereof) in any media formats and through any media channels (including, without limitation, third party websites). You also hereby do and shall grant each User of the Services a non-exclusive license to access your User Content through the Services, and to Use such User Content as permitted through the functionality of the Services and under this Agreement. You acknowledge and agree that WITTY and its affiliates, resellers, distributors, service providers, partners, and/or suppliers shall have the right to use, modify, adapt, reproduce, distribute, publish, display, reformat, excerpt, or translate any materials, content or information submitted by You to the Services; that all information publicly posted or privately transmitted through the Services is the sole responsibility of the person from which such content originated; and that WITTY cannot guarantee the identity of or the authenticity of any data posted by any other Users with whom you may interact in the course of using the Services.

**3.3 Access Limitations to the Services or Third-Party User Content.** We may disable access to Services and third-party content associated with Your Account for any reason. We may also remove or disable applications, User Content, or Services on Your Authorized Device in order to protect the Services, application providers, network operators or any other affected or potentially affected parties. Some User Content and applications available on the Services may be unavailable from time to time or may only be offered for a limited time due to contractual or other limitations.

**3.4 Maintenance of User Content.** WITTY takes great care to protect Your User Content, however, You are ultimately responsible for making sure You maintain a backup of your User Content that You store on the Services. We do not have any obligation to return Your User Content to You after the Services are suspended or canceled. Except to the extent we are obligated under the law to save or provide you access to your User Content; we may permanently delete Your User Content from our servers once the Services are suspended or canceled.

#### **4. Cancellation.**

**4.1 Failure to Abide by this Agreement.** If You violate this Agreement, we may take action against You including (without limitation) removing Your User Content from the Services, suspending or cancelling Your access to the Services, asking You to refrain from certain activities, blocking Your device(s) from accessing the Services, and/or referring such activity to appropriate authorities. In the event we take action against You for a violation of this Agreement, we may permanently delete, and You may permanently lose, some or all of the information or User Content associated with Your Services and/or we may cancel Your Services in their entirety. User Content that is deleted is irretrievable.

**4.2 Canceled or Terminated Services.** If Your Services are canceled or terminated (whether by You or us), Your right to use the Services stops upon the effective date of the cancellation. Except to the extent we are obligated under the law to save your User Content, **UPON CANCELLATION, ALL INFORMATION IS DELETED FROM THE SERVICES AND BECOMES IRRETRIEVABLE, INCLUDING YOUR USER CONTENT, AND WE ARE UNDER NO OBLIGATION TO RETURN ANY OF YOUR USER CONTENT TO YOU. IT IS YOUR RESPONSIBILITY TO COPY AND BACKUP YOUR USER CONTENT AND INFORMATION FROM THE SERVICES BEFORE THE EFFECTIVE DATE OF YOUR ACCOUNT CANCELLATION.**

**5. Privacy and Security Policy.** We are required to comply with federal healthcare privacy and security laws and maintain safeguards to protect the security of your health information. We devote considerable effort toward ensuring that your personal information is secure. Information regarding our use of health and other personal information is provided in our [Privacy Policy](#). As part of providing you the Services, we may need to provide you with certain communications. These communications are considered part of the Services. While secure electronic messaging is always preferred to unsecure email, under certain circumstances, unsecure email communication containing personal health information may take place between You, Your physician and Us. We cannot ensure the security or confidentiality of messages sent by email; however, you consent to this transmission. Information relating

to your care, including clinical notes and medical records, are stored on secure, encrypted servers maintained by WITTY.

**6. Service Disruptions and User Content Backup.** We strive to keep the Services up and running; however, all online services suffer occasional disruptions and outages, and WITTY isn't liable for any disruption or loss You may suffer as a result. You should regularly backup the User Content that You store on the Services. Having a regular backup plan and following it can help You prevent loss of Your User Content.

**7. Charges and Fees.**

**7.1 Charges for Physician Services.** If You agree to engage a User Physician through the Services, You agree to pay all fees or charges to your Account in accordance with the fees, charges, and billing terms in effect at the time a fee or charge is due and payable. By providing WITTY with your payment information, you agree that WITTY is authorized to immediately invoice your account for all fees and charges due and payable to WITTY hereunder and that no additional notice or consent is required. If your health plan, employer or agency has arranged with WITTY to pay the fee or any portion of the fee, or if the fee is pursuant to some other arrangement with WITTY, that fee adjustment will be reflected in the fee that you are ultimately charged. Please check with your employer, health plan or agency to determine if any Services will be reimbursed. If you do not have insurance coverage for Services, or if your coverage is denied, you acknowledge and agree that you shall be personally responsible for all incurred expenses. WITTY offers no guarantee that you shall receive any such reimbursement. You agree and understand that WITTY merely acts a payment collector and forwards any amounts collected to the User Physician. Once the payment is forwarded to the User Physician, any payment disputes that You have must be resolved with the User Physician and not WITTY.

**7.2 Recurring Fees.** If You sign up for any of our recurring paid Services, you agree to pay the fee associated with that Service when charged. The price stated for the Service excludes all applicable sales and use taxes and currency exchange settlements, unless stated otherwise. By providing WITTY with your credit card number or PayPal account and associated payment information, you agree that WITTY is authorized to immediately invoice your account for all fees and charges due and payable to WITTY hereunder and that no additional notice or consent is required. You are solely responsible for paying such taxes or other charges, even if those taxes are not collected on your invoice. **We may suspend or cancel the Services if we do not receive an on time, full payment from You.** Suspension or cancellation of the Services for non-payment could result in a loss of access to and use of Your Account and its User Content. Suspension, cancellation or termination of the Services for non-payment will also result in the suspension or cancellation of Services that have already been paid for. WITTY reserves the right to modify or implement a new pricing structure at any time prior to billing you for your initial payment or for future payments due pursuant to this Agreement

**7.3 Physician Reimbursements.** WITTY offers User Physicians the option to have WITTY collect and remit to the User Physicians patient co-pays and/or charges for User Physicians' services collected from patients on the Site. WITTY will collect these payments and forward the charges to User Physicians once every two (2) weeks. Except for charges imposed by the payment processor, WITTY doesn't deduct any fees or commissions from the payments collected on behalf of User Physicians. WITTY reserves the right to modify or implement a new reimbursement payment structure at any time.

**7.4 Statement and Errors.** We will provide You with an online billing statement or invoice, where You can view and print Your statement. If we make an error on Your statement, You must tell us within ninety (90) days after the error first appears. We will then promptly investigate the charge. If You do not tell us within that time, You release us from all liability and claims of loss resulting from the error and we won't be required to correct the error or provide a refund. If WITTY has identified a billing error, we will correct that error within ninety (90) days.

**7.5 Refund policies.** Unless otherwise provided by law, all purchases and charged fees are final and non-refundable. Any paid Service that is cancelled shall not be prorated for

**8. Term and Termination.**

**8.1 Termination.** You may terminate your Account at any time, for any reason through your User Account or by sending an email to [support@kardiopower.org](mailto:support@kardiopower.org); however, WITTY may suspend or terminate your Account or Your use of the Services for any reason at any time. Subject to applicable law, WITTY reserves the right to maintain, delete or destroy all communications and materials posted or uploaded to the Site pursuant to its internal record retention and/or content destruction policies. After such termination, WITTY will have no further obligation to provide the Services to You. Any amounts owed by either party prior to the termination of the Services remain owed after the termination of Services.

**9. Binding Arbitration and Class Action Waiver.** This Section applies to any dispute. The term “dispute” means any dispute, action, or other controversy between You and WITTY concerning the Services (including their price) or this Agreement, whether in contract, warranty, tort, statute, regulation, ordinance, or any other legal or equitable basis (the “Dispute”). It is the party’s intent to give the term “Dispute” the broadest possible meaning allowable under law.

**9.1 All Claims or Disputes must be filed within one year.** Any claim or Dispute to which Section 9 applies must be filed for arbitration within one (1) year from when the claim or Notice of Dispute first could be filed; or else the Dispute is permanently barred from being brought.

**9.2 Notice of Dispute.** In the event of a Dispute, You or WITTY must give the other a Notice of Dispute, which is a written statement that sets forth the name, address and contact information of the party giving it, the facts giving rise to the Dispute, and the relief requested. You must send any Notice of Dispute by U.S. Mail to **WITTY HEALTH INC., ATTN: LEGAL ARBITRATION, 5850 San Felipe Suite 500, Houston, TX 77057, U.S.A..** WITTY will send any Notice of Dispute to You by U.S. Mail to Your address if we have it, or otherwise to Your email address. You and WITTY will attempt to resolve any Dispute through informal negotiation within sixty (60) days from the date the Notice of Dispute is sent. After sixty (60) days, You or WITTY may commence arbitration.

**9.3 Binding Arbitration.** If You and WITTY do not resolve a Dispute by informal negotiation, the Dispute will be conducted exclusively by binding arbitration governed by the Federal Arbitration Act (“FAA”). You are giving up the right to litigate (or participate in as a party or class member) all Disputes in court before a judge or jury. Instead, all Disputes will be resolved before a neutral arbitrator, whose decision will be final except for a limited right of appeal under the FAA. Any court with jurisdiction over the parties may enforce the arbitrator’s award.

**9.4 Arbitration Procedure.** Any arbitration will be conducted by the American Arbitration Association (the “AAA”) under its Commercial Arbitration Rules. For more information, see [www.adr.org](http://www.adr.org) or call 1-800-778-7879 FREE. No award of punitive damages will be made in any such arbitration. Each party will bear its own fees and costs in connection with any such arbitration, but the costs incurred through AAA, including the fees and expenses of the arbitrator, will be shared equally by the parties unless the arbitration award provides otherwise. All arbitration proceedings will be held only in a city where either YOU or WITTY have a place of business in the United States, at the election of the party commencing arbitration. The decision of the arbitrator or arbitrators is final, and binding and any award may be confirmed and enforced in any court of competent jurisdiction. To the extent the terms of this Agreement conflicts with the AAA’s Commercial Arbitration Rules, the terms of this Agreement shall control.

**9.5 Class Action Waiver.** Any proceedings to resolve or litigate any Dispute in any forum will be conducted solely on an individual basis. Neither You nor WITTY will seek to have any Dispute heard as a class action, private attorney general action, or in any other proceeding in which either party acts or proposes to act in a representative capacity. No arbitration or proceeding will be combined with another without the prior written consent of all parties to all affected arbitrations or proceedings. If this class action waiver is found to be illegal or unenforceable, then it will not apply, and the Dispute will proceed under the rules for arbitration stated above.

## **10. Disclaimer of Warranties.**

WITTY, AND OUR AFFILIATES, RESELLERS, DISTRIBUTORS, AND VENDORS, MAKE NO WARRANTIES, EXPRESS OR IMPLIED, GUARANTEES OR CONDITIONS WITH RESPECT TO YOUR USE OF THE SERVICES. YOU UNDERSTAND THAT USE OF THE SERVICES IS AT YOUR OWN RISK AND THAT WE PROVIDE THE SERVICES ON AN “AS IS” BASIS “WITH ALL FAULTS” AND “AS AVAILABLE.” WITTY DOESN’T GUARANTEE THE ACCURACY OR TIMELINESS OF INFORMATION AVAILABLE

FROM THE SERVICES. TO THE EXTENT PERMITTED UNDER YOUR LOCAL LAW, WE EXCLUDE ANY IMPLIED WARRANTIES, INCLUDING FOR MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, WORKMANLIKE EFFORT, AND NON-INFRINGEMENT. YOU MAY HAVE CERTAIN RIGHTS UNDER YOUR LOCAL LAW. NOTHING IN THIS AGREEMENT IS INTENDED TO AFFECT THOSE RIGHTS, IF THEY ARE APPLICABLE. YOU ACKNOWLEDGE THAT COMPUTER AND TELECOMMUNICATIONS SYSTEMS ARE NOT FAULT-FREE AND OCCASIONAL PERIODS OF DOWNTIME OCCUR. WE DO NOT GUARANTEE THE SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE OR THAT CONTENT LOSS WON'T OCCUR.

**11. Limitation of Liability.**

NEITHER WITTY NOR ANY OF ITS AGENTS, AFFILIATES, RESELLERS, DISTRIBUTORS, VENDORS, OR PROVIDERS OF THIRD PARTY SOFTWARE OR THIRD-PARTY CONTENT SHALL BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY FORM OF DAMAGES OR LOSSES, INCLUDING, WITHOUT LIMITATION, CONSEQUENTIAL, LOST PROFITS, SPECIAL, INDIRECT, INCIDENTAL, OR PUNITIVE, ARISING OUT OF OR RELATED TO THE USE OR ATTEMPTED USE OF THE SERVICES. TO THE MAXIMUM EXTENT PERMITTED BY LAW, THESE LIMITATIONS AND EXCLUSIONS APPLY TO ANYTHING RELATED TO THIS AGREEMENT SUCH AS LOSS OF CONTENT; ANY VIRUS AFFECTING YOUR USE OF THE SERVICES; DELAYS OR FAILURES IN STARTING OR COMPLETING TRANSMISSIONS OR TRANSACTIONS; CLAIMS FOR BREACH OF CONTRACT, WARRANTY, GUARANTEE, OR CONDITION; STRICT LIABILITY; NEGLIGENCE; MISREPRESENTATION OR OMISSION; TRESPASS; VIOLATION OF STATUTE OR REGULATION; OR UNJUST ENRICHMENT. SOME OR ALL OF THESE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY TO YOU IF YOUR STATE OR PROVINCE DOESN'T ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL, CONSEQUENTIAL, OR OTHER DAMAGES.

**12. Indemnification.** You will defend Us against any claim, demand, suit or proceeding made or brought against Us by a third party alleging that Your User Content, or Your use of any Service or User Content in breach of this Agreement, infringes or misappropriates such third party's intellectual property rights or violates applicable law (a "**Claim Against Us**"), and will indemnify Us from any damages, attorney fees and costs finally awarded against Us as a result of, or for any amounts paid by Us under a court-approved settlement of, a Claim Against Us.

**13. Contracting Entity, Applicable Law, Venue and Severability.** You are contracting with Witty Health Inc., whose address is 5850 San Felipe Suite 500, Houston, TX 77057, U.S.A. This Agreement is strictly governed by the laws of the State of Texas, U.S.A. and the controlling law of the United States of America, without regard to any conflicts of law provisions. All parts of these Agreement apply to the maximum extent permitted by law. You irrevocably consent to the exclusive jurisdiction and venue of the state or federal courts in Harris County, Texas, for all Disputes arising out of or relating to this Agreement or the Services that are not governed by the arbitration provision set forth in Section 9. We both agree that if we cannot enforce a part of this contract as written, then that part will be replaced with terms that most closely match the intent of the part we cannot enforce to the extent permitted by law. The invalidity of part of this Agreement will not affect the validity and enforceability of the remaining provisions. The section headings are for convenience and do not have any force or effect.

**14. Third-party websites.** You may be able to access third-party websites or services via the Services or via applications You download through the Services. WITTY isn't responsible for third-party websites, services, or material available through those third-party services. You are solely responsible for Your dealings with third-parties (including advertisers). Your use of third-party websites or services may be subject to that third-party's terms and conditions.

**15. DRM.** If You access User Content protected with digital rights management (DRM), the DRM software may automatically request media usage rights from a rights server online and download and install DRM updates so that You can play the material.

**16. Survival.** Sections that by their terms apply after this Agreement ends will survive any termination or cancellation of this Agreement.



**17. Assignment, No Third-Party Beneficiaries.** We may assign this Agreement, in whole or in part, at any time without notice to You. You may not assign this Agreement or transfer any rights to use the Services without the written consent of WITTY. This Agreement is solely for Your and our benefit.

**18. Notices to parties.** You consent to WITTY providing You notifications about the Services or information the law requires us to provide via email to the address that You specified when You signed up for an Account. Notices emailed to You will be deemed given and received when the email is sent. If You do not consent to receive notices electronically, You must cancel your Account and stop using the Services. You may notify WITTY as stated in customer support for the Services.

**19. Contract interpretation.** This is the entire Agreement between You and WITTY for Your use of the Services. It supersedes any prior Agreements between You and WITTY regarding Your use of the Services. All parts of this Agreement apply to the maximum extent permitted by relevant law. If a court or arbitrator holds that we can't enforce a part of this Agreement as written, we may replace those terms with similar terms to the extent enforceable under the relevant law, but the rest of this Agreement won't change.

**20. Children's Online Privacy Protection Act ("Coppa").** We do not knowingly or intentionally collect or maintain personally identifiable information from persons under 13 years old, and no part of our website or application is directed to persons under 13. **IF YOU ARE UNDER 13 YEARS OF AGE, PLEASE DO NOT USE OR ACCESS OUR SERVICES AT ANY TIME OR IN ANY MANNER.** If WITTY learns that personally identifiable information of persons less than 13 years old has been collected without verifiable parental consent, then we will take appropriate steps to delete this information. If you are a parent or guardian and discover that your child under the age of 13 has obtained a WITTY account, then please contact us at [support@kardiopower.org](mailto:support@kardiopower.org).

**21. Force Majeure.** WITTY shall not be liable for any delay, default, or failure to perform any term or condition of this Agreement as a result of conditions, including any strike, force majeure or any other event beyond our control.

**22. Notices//Intellectual Property Rights.** All portions of the Services are Copyright © 2019 Witty Health Inc., whose address is 5850 San Felipe Suite 500, Houston, TX 77057, U.S.A. All rights reserved. "Intellectual Property Rights" means any and all (a) rights associated with works of authorship, including but not limited to copyrights, (b) trademark and trade name rights and similar rights, (c) trade secret rights, (d) patents and (e) all other intellectual property rights in any jurisdiction throughout the world. To the fullest extent permitted by law, WITTY retains ownership of all its Intellectual Property Rights in the Services. We or our suppliers own the title, copyright, and other intellectual property rights in the Services. WITTY and the names, logos, and icons of all WITTY products, software, and services may be either trademarks or registered trademarks of WITTY in the United States and/or other countries. The names of actual companies and products may be the trademarks of their respective owners. Any rights not expressly granted in this Agreement are reserved. Nothing in this Agreement shall be deemed or construed to constitute or create a partnership, association, joint venture, agency or fiduciary relationship between the parties hereto.

**Version:** September 1, 2019