

Sleep Health End User License Agreement

This Sleep Health **End User License Agreement** (together with the **Privacy Policy**, **HIPAA Policy**, and any other terms of use and terms and conditions applicable to the services provided hereunder, the "**Agreement**") is a binding agreement between you ("**End User**" or "**you**") and BLACKSTONE MEDICAL SERVICES, LLC (the "**Company**").

This Agreement governs your use of the Sleep Health, (including all related documentation, the "**App**"). The App is licensed, not sold, to you in accordance with the terms and conditions herein.

BY CLICKING "I AGREE" OR BY OTHERWISE INDICATING YOUR CONSENT TO THE TERMS AND CONDITIONS OF THE APP WHEN PROMPTED TO DO SO BY THE APP, YOU: (A) ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND THIS AGREEMENT; (B) REPRESENT THAT YOU ARE EIGHTEEN (18) YEARS OF AGE OR OLDER; AND (C) ACCEPT THIS AGREEMENT AND AGREE THAT YOU ARE LEGALLY BOUND BY ITS TERMS. IF YOU DO NOT AGREE TO THESE TERMS, DO NOT USE THE APP OR DELETE IT FROM YOUR MOBILE DEVICE.

1. License Grant. Subject to the terms of this Agreement, Company grants you a limited, non-exclusive, and nontransferable license to:

(a) download, install, and use the App for your personal, non-commercial use on a single mobile device owned or otherwise controlled by you ("**Mobile Device**"), strictly in accordance with the App's documentation; and

(b) access, stream, download, and use on such Mobile Device the Content and Services (as defined in Section 5) made available in or otherwise accessible through the App, strictly in accordance with this Agreement and the Terms of Use applicable to such Content and Services as set forth in Section 5.

2. License Restrictions. You shall not:

(a) copy the App, except as expressly permitted by this license;

(b) modify, translate, adapt, or otherwise create derivative works or improvements, whether or not patentable, of the App;

(c) reverse engineer, disassemble, decompile, decode, or otherwise attempt to derive or gain access to the source code of the App or any part thereof;

(d) remove, delete, alter, or obscure any trademarks or any copyright, trademark, patent, or other intellectual property or proprietary rights notices from the App, including any copy thereof;

(e) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available the App, or any features or functionality of the App, to any third party for any reason, including by making the App available on a network where it is capable of being accessed by more than one device at any time;

(f) remove, disable, circumvent, or otherwise create or implement any workaround to any copy protection, rights management, or security features in or protecting the App; or

(g) use the App in, or in association with, the design, construction, maintenance, or operation of any hazardous environments or systems, including any: (i) power generation systems; (ii) aircraft navigation or communication systems, air traffic control systems, or any other transport management systems; (iii) safety-critical applications, including medical or life-support systems, vehicle operation applications or any police, fire, or other safety response systems; (iv) and military or aerospace applications, weapons systems, or environments.

3. Reservation of Rights. You acknowledge and agree that the App is provided under license, and not sold, to you. You do not acquire any ownership interest in the App under this Agreement, or any other rights thereto other than to use the App in accordance with the license granted, and subject to all terms, conditions, and restrictions, under this Agreement. Company and its licensors and service providers, as applicable, reserve and shall retain their entire right, title, and interest in and to the App, including all copyrights, trademarks, and other intellectual property rights therein or relating thereto, except as expressly granted to you in this Agreement.

4. Collection and Use of Your Information. You acknowledge that when you download, install, or use the App, Company may use automatic means (including, for example, cookies and web beacons) to collect information about your Mobile Device and about your use of the App (see the Privacy Policy for further information on how this information is collected and for what purposes it is used). You also may be required to provide certain information about yourself as a condition to downloading, installing, or using the App or certain of its features or functionality, and the App may require certain information about yourself to be shared with others, in accordance with the Privacy Policy. All information we collect through or in connection with the App is subject to the Privacy Policy and the Company's HIPAA Policy. Pursuant to the Health Insurance Portability and Accountability Act of 1996, as amended ("HIPAA") and any applicable Business Associate Agreement, the Company is permitted to use and/or aggregate deidentified data. BY CLICKING "I AGREE" OR BY OTHERWISE INDICATING YOUR CONSENT TO THE TERMS AND CONDITIONS OF THE APP WHEN PROMPTED TO DO SO BY THE APP, YOU EXPRESSLY CONSENT TO TREATMENT, PAYMENT, HEALTHCARE OPERATIONS, AND ALL OTHER ACTIONS TAKEN BY THE COMPANY WHICH MAY INCLUDE TRANSPORTING YOUR DATA TO THIRD PARTIES INVOLVED IN PAYMENT PROCESSING OR PROVIDING CARE WITH RESPECT TO THE SLEEP STUDY SERVICES PROVIDED IN CONNECTION WITH THE APP, SUBJECT TO THE PRIVACY POLICY AND HIPAA POLICY.

5. Content and Services. The App may provide you with access to Company's website located at blackstonemedicalservices.com (the "**Website**") and products and services accessible thereon, and certain features, functionality, and content accessible on or through the App may be hosted on the Website (collectively, "**Content and Services**"). Your access to and use of such Content and Services are governed by the Agreement. You may be required to register with the Website, and your failure to do so may restrict your access or use of certain of the App's features and functionality. Any violation of any terms of use governing the Website will be deemed a violation of this Agreement.

6. Geographic Restrictions. The Content and Services are provided for access and use only by persons located in the United States. You acknowledge that you may not be able to access all or some of the Content and Services outside of the United States and that access thereto may not be legal by certain persons or in certain countries. If you access the Content and Services from outside the United States, you are responsible for compliance with local laws.

7. Patient Data and Legal Compliance. If the App is enabled to allow users to transmit, store, manage, or receive confidential patient information (“Patient Health Information” or “PHI”), state and federal laws, including but not limited to HIPAA, and the Privacy Rule and Security Rule enacted pursuant to HIPAA, may govern the gathering, use, transmission, processing, receipt, reporting, disclosure, maintenance, and storage of the Patient Information (collectively, the “Privacy Laws”). The Company uses commercially reasonable efforts to protect user information, including PHI, from unauthorized access or use and will promptly report to users any unauthorized access or use of such information to the extent required by applicable law (please refer to the Privacy Policy for the Company’s data security measures). The Company always strives to be compliant with all applicable privacy and security laws and regulations.

8. Updates. Company may from time to time in its sole discretion develop and provide App updates, which may include upgrades, bug fixes, patches, other error corrections, and/or new features (collectively, including related documentation, “**Updates**”). Updates may also modify or delete in their entirety certain features and functionality. You agree that Company has no obligation to provide any Updates or to continue to provide or enable any particular features or functionality. Based on your Mobile Device settings, when your Mobile Device is connected to the internet either:

- (a) the App may automatically download and install all available Updates; or
- (b) you may receive notice of or be prompted to download and install available Updates.

You shall promptly download and install all Updates and acknowledge and agree that the App or portions thereof may not properly operate should you fail to do so. You further agree that all Updates will be deemed part of the App and be subject to all terms and conditions of this Agreement.

9. Third-Party Materials. The App may display, include, or make available third-party content (including data, information, applications, and other products, services, and/or materials) or provide links to third-party websites or services, including through third-party advertising (“**Third-Party Materials**”). You acknowledge and agree that Company is not responsible for Third-Party Materials, including their accuracy, completeness, timeliness, validity, copyright compliance, legality, decency, quality, or any other aspect thereof. Company does not assume and will not have any liability or responsibility to you or any other person or entity for any Third-Party Materials. Third-Party Materials and links thereto are provided solely as a convenience to you, and you access and use them entirely at your own risk and subject to such third parties' terms and conditions.

10. Term and Termination.

(a) The term of the Agreement commences when you download the App and acknowledge your acceptance of the terms and conditions of the Agreement. The term will continue in effect until terminated by you or Company as set forth in this Section 10.

(b) You may terminate this Agreement by deleting the App and all copies thereof from your Mobile Device.

(c) Company may terminate this Agreement without notice at any time and for any reason or no reason at all. In addition, this Agreement will terminate immediately and automatically without any notice if you violate any of the terms and conditions of this Agreement.

(d) Upon termination:

(i) all rights granted to you under this Agreement will also terminate; and

(ii) you must cease all use of the App and delete all copies of the App from your Mobile Device and account.

(e) Termination will not limit any of Company's rights or remedies at law or in equity.

11. Disclaimer of Warranties. THE APP IS PROVIDED TO END USER "AS IS" AND WITH ALL FAULTS AND DEFECTS WITHOUT WARRANTY OF ANY KIND. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, COMPANY, ON ITS OWN BEHALF AND ON BEHALF OF ITS AFFILIATES AND ITS AND THEIR RESPECTIVE LICENSORS AND SERVICE PROVIDERS, EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, WITH RESPECT TO THE APP, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND WARRANTIES THAT MAY ARISE OUT OF COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE, OR TRADE PRACTICE. WITHOUT LIMITATION TO THE FOREGOING, COMPANY PROVIDES NO WARRANTY OR UNDERTAKING, AND MAKES NO REPRESENTATION OF ANY KIND THAT THE APP WILL MEET YOUR REQUIREMENTS, ACHIEVE ANY INTENDED RESULTS, BE COMPATIBLE, OR WORK WITH ANY OTHER SOFTWARE, APPLICATIONS, SYSTEMS, OR SERVICES, OPERATE WITHOUT INTERRUPTION, MEET ANY PERFORMANCE OR RELIABILITY STANDARDS, OR BE ERROR-FREE, OR THAT ANY ERRORS OR DEFECTS CAN OR WILL BE CORRECTED.

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF OR LIMITATIONS ON IMPLIED WARRANTIES OR THE LIMITATIONS ON THE APPLICABLE STATUTORY RIGHTS OF A CONSUMER, SO SOME OR ALL OF THE ABOVE EXCLUSIONS AND LIMITATIONS MAY NOT APPLY TO YOU.

12. Limitation of Liability. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL COMPANY OR ITS AFFILIATES, OR ANY OF ITS OR THEIR RESPECTIVE LICENSORS OR SERVICE PROVIDERS, HAVE ANY LIABILITY ARISING FROM OR RELATED TO YOUR USE OF OR INABILITY TO USE THE APP OR THE CONTENT AND SERVICES FOR:

(a) PERSONAL INJURY, PROPERTY DAMAGE, LOST PROFITS, COST OF SUBSTITUTE GOODS OR SERVICES, LOSS OF DATA, LOSS OF GOODWILL, BUSINESS INTERRUPTION, COMPUTER FAILURE OR MALFUNCTION, OR ANY OTHER CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES.

(b) DIRECT DAMAGES IN AMOUNTS THAT IN THE AGGREGATE EXCEED THE AMOUNT ACTUALLY PAID BY YOU FOR THE APP.

IN NO EVENT SHALL THE COMPANY'S AGGREGATE LIABILITY TO YOU FOR ALL DAMAGES EXCEED THE GREATER OF ONE HUNDRED UNITED STATES DOLLARS (US \$100.00) OR THE AMOUNT ACTUALLY YOU ACTUALLY PAID TO THE COMPANY IN THE LAST SIX (6) MONTHS FOR THE APP, IF ANY (THE "CAP"). IF THE CAP SET FORTH HEREIN IS FOUND TO BE UNENFORCEABLE, SUCH CAP ON DAMAGES SHALL BE THE LOWEST AMOUNT PERMITTED BY APPLICABLE LAW.

THE FOREGOING LIMITATIONS WILL APPLY WHETHER SUCH DAMAGES ARISE OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE AND REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE OR COMPANY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SOME JURISDICTIONS DO NOT ALLOW CERTAIN LIMITATIONS OF LIABILITY SO SOME OR ALL OF THE ABOVE LIMITATIONS OF LIABILITY MAY NOT APPLY TO YOU.

13. Indemnification. You agree to indemnify, defend, and hold harmless Company and its officers, directors, employees, agents, affiliates, successors, and assigns from and against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees, arising from or relating to your use or misuse of the App or your breach of this Agreement, including but not limited to the content you submit or make available through this App.

14. Export Regulation. The App may be subject to US export control laws, including the Export Control Reform Act and its associated regulations. You shall not, directly or indirectly, export, re-export, or release the App to, or make the App accessible from, any jurisdiction or country to which export, re-export, or release is prohibited by law, rule, or regulation. You shall comply with all applicable federal laws, regulations, and rules, and complete all required undertakings (including obtaining any necessary export license or other governmental approval), prior to exporting, re-exporting, releasing, or otherwise making the App available outside the US.

15. US Government Rights. The App is commercial computer software, as such term is defined in 48 C.F.R. §2.101. Accordingly, if you are an agency of the US Government or any contractor therefor, you receive only those rights with respect to the App as are granted to all other end users under license, in accordance with (a) 48 C.F.R. §227.7201 through 48 C.F.R. §227.7204, with respect to the Department of Defense and their contractors, or (b) 48 C.F.R. §12.212, with respect to all other US Government licensees and their contractors.

16. Severability. If any provision of this Agreement 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 this Agreement will continue in full force and effect.

17. Governing Law. This Agreement is governed by and construed in accordance with the internal laws of the State of Florida without giving effect to any choice or conflict of law provision or rule. Any legal suit, action, or proceeding arising out of or related to this Agreement or the App shall be instituted exclusively in the federal courts of the United States or the courts of the State of Florida in each case located in Tampa and Hillsborough County. You waive any and all objections to the exercise of jurisdiction over you by such courts and to venue in such courts.

18. Limitation of Time to File Claims. ANY CAUSE OF ACTION OR CLAIM YOU MAY HAVE ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE APP MUST BE COMMENCED WITHIN THE SHORTER OF: (A) ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES; OR (B) THE SHORTEST LIMIT OF TIME PERMITTED BY APPLICABLE LAW. ANY CAUSE OF ACTION OR CLAIM NOT BROUGHT WITHIN THE APPLICABLE TIMEFRAME ABOVE IS PERMANENTLY BARRED.

19. Entire Agreement. This Agreement constitutes the entire agreement between you and Company with respect to the App and supersede all prior or contemporaneous understandings and agreements, whether written or oral, with respect to the App.

20. Waiver. No failure to exercise, and no delay in exercising, on the part of either party, 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 this Agreement and any applicable purchase or other terms, the terms of this Agreement shall govern.

Patient Name:

Patient/Caregiver/POA Electronic Signature

Electronic Signature Date