

# Terms and Conditions of Use

Date of Last Revision: March 1, 2025

IMPORTANT: PLEASE READ THESE TERMS CAREFULLY AS THEY MAY IMPACT YOUR LEGAL RIGHTS IN THE EVENT OF A DISPUTE BETWEEN US. SPECIFICALLY, PLEASE REFER TO SECTION 19 BELOW, WHICH REQUIRES THAT CERTAIN DISPUTES BE SETTLED THROUGH MANDATORY BINDING ARBITRATION WHICH WILL PRECLUDE YOU FROM LEADING OR PARTICIPATING IN A CLASS ACTION.

AMONG OTHER ACTIVITIES, DAYHOFF'S SERVICES ENABLE COORDINATION AND COMMUNICATION WITH A HEALTH CARE PROVIDER. IT DOES NOT REPLACE YOUR RELATIONSHIP WITH ANY PHYSICIAN.

THESE SERVICES MIGHT NOT BE APPROPRIATE FOR ALL MEDICAL CONDITIONS OR CONCERNS. IF YOU THINK YOU MAY HAVE A MEDICAL EMERGENCY OR MENTAL HEALTH CRISIS, CALL YOUR DOCTOR OR 911 IMMEDIATELY. DO NOT ACCESS THE SERVICES FOR EMERGENCY OR CRISIS CARE.

## Introduction

Dayhoffman Technologies Inc. and its affiliates (collectively, "Dayhoff," "we ", "us", or "our") own and operate the websites located at [www.dayhoff.ai](http://www.dayhoff.ai), [www.dayhoffvault.ai](http://www.dayhoffvault.ai), (collectively, the "Websites"), and their associated mobile applications ("Apps"). We refer to the Websites, Apps, and other services provided by Dayhoff together herein as the "Services." In these Terms of Use, the terms "you" and "yours" refer to the person using the Services.

These terms and conditions of use ("Terms of Use") describe your rights and responsibilities with regard to the Services. Your access to and use of the Services is subject to these Terms of Use, our Privacy Policy, as well as all applicable laws and regulations. In using certain parts of the Services, you may be presented with additional or supplementary terms regarding the use of those specific Services, and you agree to review and be bound by such additional terms.

PLEASE READ THESE TERMS OF USE CAREFULLY BECAUSE THEY SET FORTH THE IMPORTANT TERMS YOU WILL NEED TO KNOW ABOUT THE SERVICES.

YOU UNDERSTAND THAT BY ACCESSING OR USING THE SERVICES, YOU ACKNOWLEDGE THAT YOU HAVE READ, UNDERSTOOD, AND AGREE TO BE LEGALLY BOUND BY AND COMPLY WITH THESE TERMS OF USE. IF YOU DO NOT OR CANNOT AGREE WITH ANY PART OF THESE TERMS OF USE, YOU MAY NOT USE THE SERVICES.

THE TERMS OF USE ARE SUBJECT TO CHANGE AS PROVIDED HEREIN.

These Terms of Use Contain the Following Sections:

- Services Overview, Availability, and Eligibility
- Telehealth, Pharmacy, and At-Home Testing Services
- Your Financial Responsibility; No Insurance
- Body Membership Terms and Conditions
- Registration and Account Creation
- Privacy
- Ownership and License to Use the Services
- User Content and Dayhoff's License to Use Such Content
- Copyright Notices
- Restrictions on Use
- Disclaimer of Warranties
- Limitation of Liability
- Indemnification
- Third-Party Links and Features on the Services
- Changes to the Terms of Use and the Services
- Payments
- Termination
- Governing Law; Severability
- Dispute Resolution: Binding Arbitration Clause and Class Waiver
- Communications by Text Message and Email
- Miscellaneous Terms
- Contact Us
- Notice to Patients - Open Payments Database

## **Availability**

Certain of our Services are currently only available to individuals located in certain states.

### **1. Services Overview, Availability, and Eligibility**

Overview of the Services. The Services may include (i) providing individuals with information on health care and wellness; (ii) providing individuals with pharmacy

services; (iii) providing individuals with access to technology-oriented tools for addressing certain health issues; (iv) development and gathering of health care records and health care information with retention of the same for use in health care provider appointments, communications, and pharmacy services; (v) administrative support in connection with scheduling, payment for health care provider services, and payment for pharmacy services; and (vi) telecommunications support for using the Services as a means of direct access to a health care provider for communication, consultations, assessments, and treatment by such health care organizations and their providers.

**Availability.** Certain of our Services are currently only available to individuals located in certain states. You will be provided with notice of such limitations on availability of certain Services in your location when using those parts of the Services.

Dayhoff is based in the United States. We provide the Services for use only by persons located in the United States. We make no claims or representations that the Services or any material included in the Services are accessible or appropriate outside of the United States. Access to the Services may not be legal by certain persons or in certain countries. If you access the Services from outside the United States, you do so at your own risk and you are solely responsible for compliance with local laws, including export laws as applicable.

**Eligibility.** Our Services are intended for use by you only if you are 18 years of age or over. To qualify to use the Services, the following must be true, and by accessing or using the Services, you represent and warrant that they are true:

- You are age 18 or over or, if you are accessing the Services in violation of the Eligibility requirement related to age, you otherwise have the express consent of your parent or legal guardian. Note, however, that some Services may only be available to individuals over the age of 21, and in such circumstances, you will be notified of this requirement.
- You are located in a state where we operate (depending on the type of Services).
- You agree to be legally bound by and comply with these Terms of Use.

You understand and agree that satisfying the above requirements does not guarantee that you will receive Services. In addition to the above requirements, Dayhoff and certain affiliated professional entities reserve the right to change or include new requirements as deemed appropriate in their sole discretion without providing prior notice to you.

To access or use the Services, you must have compatible devices, access to the Internet, and certain necessary software. Fees and charges may apply to your use of mobile services and to the Internet.

## **2. Telehealth, Pharmacy, and At-Home Testing Services**

Telehealth Services. Telemedicine involves the delivery of health care services using electronic communications, information technology, or other means between a health care provider and a patient who are not in the same physical location. Telemedicine may be used for diagnosis, treatment, follow-up and/or related patient education, and may include, but is not limited to:

- Electronic transmission of medical records, photo images, personal health information, or other data between a patient and health care provider;
- Interactions between a patient and health care provider via audio, video, and/or data communications; and
- Use of output data from medical devices, sound, and video files.

The electronic systems used in the Services will incorporate network and software security protocols to protect the privacy and security of health information, and will include measures to safeguard your data to ensure its integrity against intentional or unintentional corruption or unlawful access. By accepting the Terms of Use, you agree and consent to Dayhoff, the affiliated physician practices, the health care providers contracted or employed by the affiliated physician practices, and any other health care organization(s) or provider(s) with whom we partner to provide the Services to you sending you disclosures, notices, messages, reports, and other communications either in writing or electronically including without limitation through your account or by email. It is your responsibility to monitor these communications. You acknowledge and agree that you will not hold us, any affiliated physician practice, any health care provider contracted or employed by an affiliated physician practice, or any health care organization(s) or provider(s) with whom we partner to offer the Services to you liable for any loss, injury, or claim of any kind resulting from your failure to read these communications or for your failure to comply with any treatment recommendations contained in these communications. Moreover, you acknowledge and agree that no means of electronic transmission can be guaranteed to be 100% secure. By accessing or using the Services, you agree to us transmitting health and other information to you electronically and that any information sent to or signed by you or us electronically shall be deemed equivalent to as if such information was provided or signed in writing.

Please see our Consent to Telehealth available at [dayhoff.ai](https://dayhoff.ai) > Consent to Telehealth for additional information about the risks and benefits of telehealth. The Consent to

Telehealth is hereby incorporated into these Terms of Use by reference and constitutes a part of these Terms of Use.

Your Relationship with Dayhoff. Dayhoff does not provide any medical services, including via the Services. Rather, Dayhoff provides a technology platform for you to access a health care provider who is employed or contracted with a Dayhoff affiliated physician practice and obtain access to additional information, which you may or may not choose to utilize in planning your health care and wellness. The health and wellness resources made available through our Services are for informational purposes only, and are not a substitute for direct in-person health care services in all cases; nor are they an indicator of specific results. The decision to focus on diagnosis, treatment recommendations, or both, rests with you and the health care provider. You understand that by coordinating and consulting with an affiliated physician practice or its health care providers through the Services, you are not entering into a provider-patient relationship with Dayhoff.

Except for specific communications received from an affiliated physician practice or its health care providers, none of the information you receive through the Services should be considered medical advice.

Pharmacy Services. If you receive a prescription as a result of your use of the Services, you may select Dayhoff's pharmacy or one of our partner pharmacies (collectively, the "Dayhoff Pharmacy Network") to ship your prescription. You may also choose to have your prescription fulfilled through the pharmacy of your choice when prompted during your use of the Services. You give us consent to send and disclose to the Dayhoff Pharmacy Network or the pharmacy of your choice all information provided by you, health care records, and other applicable health care information and personal information (such as your name, location and demographic information) so that you may receive pharmacy services.

If you select to use the Dayhoff Pharmacy Network to fulfill any prescriptions, you acknowledge that your medication will not be shipped in child-resistant packaging and that you must keep it out of the reach of children.

At-home Testing Services.

At-home sample collection kits and laboratory services available through the Services may require a valid order by a licensed health care provider. We or our subsidiaries have partnered with a health care provider who is licensed in your state to review your request for at-home testing (the "Reviewing Provider"). You understand and agree that at-home testing services are intended for informational,

educational, and wellness purposes only. They are not intended to be diagnostic. You further understand and agree that you do not establish a provider-patient relationship with the Reviewing Provider as a result of your use of the Services.

We will send or cause to be sent the requested test kit to your address after any required health care provider review and approval. You must follow the instructions that accompany the kit to register your kit, collect the applicable biological sample(s), complete any required documentation, and return such biological samples and documentation to the applicable laboratory that performs the testing (the "Lab"). Failure to follow the instructions may result in your samples not being processed by the Lab.

The Lab sends the results of the tests to the Reviewing Provider who releases the test results to us. We provide the test results to you via the Services. You understand and agree that it is your responsibility to bring your results to your primary health care provider for interpretation and to inform decisions made about your health and treatment.

### **3. Your Financial Responsibility for Services; No Insurance**

By choosing to use the Services, you are specifically choosing to obtain products and services on a cash-pay basis outside of any commercial health insurance plan or federal or state health care program. Thus, you are solely responsible for the costs of any services or products provided to you. Dayhoff and the affiliated physician practices do not accept commercial health insurance plans, are not in-network with any commercial health insurance plans, and are not enrolled with federal or state health care programs, such as Medicare and Medicaid.

By accessing or using the Services, you agree that: (1) you will not seek payment or accept reimbursement, either directly or indirectly, from any insurance plan or other third-party payer, including any state or federal health care program, for any services or products purchased through Dayhoff, regardless of whether the payer covers it; (2) if you are a federal health program beneficiary, you agree that neither you, Dayhoff, the affiliated physician practices, or any of the health care organization(s) or provider(s) with whom we partner to provide health care and pharmacy services to you will submit a claim for reimbursement to any federal or state healthcare program for the costs of the services and products provided to you through the Services; and (3) you will not count the amount you pay for any services or products purchased through Dayhoff towards an insurance deductible or out-of-pocket spending requirements. If you are enrolled in Medicare Part D, you will not count any portion of the amount you pay for services or products or any associated costs, towards your Medicare Part D true out-of-pocket ("TrOOP") costs. Please also see Section 16 below for additional terms applicable to your payment obligations.

#### **4. Body Membership Terms and Conditions**

This section outlines the additional terms and conditions for participating in the Dayhoff Body Program, offered through Dayhoff and its affiliated professional entities. These terms supplement the Dayhoff Terms and Conditions of Use governing your use of the Services. The Dayhoff Body Program is designed to provide access to routine and necessary services for weight loss with pharmacotherapy. The Dayhoff Body program is not intended for use in emergencies or mental health crises, or by patients with specialized needs that should be treated by appropriate specialists. The Dayhoff Body Program is a membership-based service through which eligible Members can obtain limited medical care at the discretion of the Member's provider, including physician services and laboratory testing, for an automatic, recurring payment. The Dayhoff Body Program is not health insurance or a substitute for health insurance, does not meet any individual health insurance mandate under federal or state law, and cannot replace your relationship with any specialty provider. You should keep your existing health insurance coverage while you are participating in the Dayhoff Body Program or obtain health insurance coverage if you do not currently have it.

#### **Auto-Renewing Program Membership and Additional Services**

Your membership in the Dayhoff Body Program ("Program Membership"), including your ability to access the Dayhoff Body Membership Services, will commence when your health care provider writes a prescription and communicates your care plan and risks and benefits of treatment.

The Dayhoff Body Program includes:

- Up to twenty four (24) discrete medical consults per year with your Dayhoff-affiliated health care provider;
- Secure messaging with your coach, who is a Dayhoff-affiliated healthcare provider, between discrete medical consults;
- Evidence based onboarding curriculum;
- Laboratory testing, if ordered by your health care provider.
- Medication may be included depending on your plan

(the "Dayhoff Body Membership Services").

Members may be prescribed compounded medication during national drug shortages. Dayhoff Body is cash pay only and Dayhoff does not accept insurance. The Dayhoff Body Program might provide insurance coverage support to Members using insurance to help cover the cost of medication, who, through our partner, will

receive assistance with benefits verification and prior authorization for medication. Compounded semaglutide is not covered by insurance and insurance navigation services are not available to pursue coverage.

In certain cases, you or your health care provider may request that you complete services (e.g., medical consults or laboratory testing) as part of the Dayhoff Body Membership Services (the “Dayhoff Body Additional Services”). For each medical consult after the twenty fourth (24th) consult per year, you will be charged a separate fee of \$15.00 per additional consult and for each additional laboratory test you will be charged a separate fee based on what tests are ordered (in each case, the “Dayhoff Body Additional Services Fee”). As part of your participation in the Dayhoff Body Program, you agree that any Dayhoff Body Additional Services Fees that you incur can be charged to your payment card or PayPal account on file within seven (7) days of the date on when such Dayhoff Body Additional Services are rendered.

The Dayhoff Body Membership Services may change from time to time. Dayhoff will strive to give reasonable notice of any such change. You may accept the revised Dayhoff Body Membership Services by continuing in the Dayhoff Body Program or reject them by terminating your Dayhoff Body Program Membership. Dayhoff reserves the right to transition your Program Membership to the current Program Membership terms and conditions upon notice to you.

#### Payment of Dayhoff Body Program Membership Fee

You will have an opportunity to review and agree to the recurring cost of Membership (the “Dayhoff Body Membership Fee”) and timing of charges during the checkout process. Your payment method on file will be automatically billed for the cost of Membership at the price and frequency displayed at the time of checkout on an automatic, recurring, basis unless and until you cancel. Once paid, your Dayhoff Body Membership Fee is non-refundable. You may cancel your Dayhoff Body Membership by emailing [privacy@dayhoff.ai](mailto:privacy@dayhoff.ai), or logging into your secure user account; see details on canceling below.

**YOU WILL BE AUTOMATICALLY CHARGED THE DAYHOFF BODY MEMBERSHIP FEE EVERY MONTH EVEN IF YOU DO NOT USE ALL OF THE OFFERED DAYHOFF BODY MEMBERSHIP SERVICES.** Even if you do not request or receive medication through the Dayhoff Body Program, you will still have access to the Dayhoff Body Membership Services described above and you will continue to be charged on an automatically renewing basis unless and until you cancel. We reserve the right to cancel your membership at any time with reasonable notice.



Dayhoff may offer a one-time introductory price (“Introductory Price”) when you first enroll into the Dayhoff Body Program. The Introductory Price will be governed by the terms and conditions disclosed to you at checkout.

### Canceling your Dayhoff Body Program Membership

To cancel your Dayhoff Body Program membership, you may log into your Secure User Account (click into the Dayhoff Body Program and select “Cancel Subscription” from the Program Details page) or by emailing us at [privacy@dayhoff.ai](mailto:privacy@dayhoff.ai). Message your provider if you want to discuss switching medications while remaining in the Dayhoff Body Program. To avoid further charges to the payment method on file, you must cancel at least 48 hours in advance of your next renewal date.

### Effect of Dayhoff Body Program Membership cancellation

If you cancel at least 48 hours before your next renewal date, your Dayhoff Body Membership will not automatically renew on your renewal date, and you will not be charged any additional Dayhoff Body Membership Fee payments. You will receive Dayhoff Body Program Membership Services through the last day of your billing cycle for which you have paid the Dayhoff Body Membership Fee (the “Last Billing Cycle”). Thereafter, you will not be eligible to receive any Dayhoff Body Program Membership Services, including prescriptions from your provider. We recommend you talk to your Dayhoff-affiliated health care professional before discontinuing treatment as abruptly stopping certain medications for health conditions can impact your health. You may be required to complete a new Dayhoff Body Program Diagnosis Online Visit to talk to a Dayhoff-affiliated healthcare professional about re-joining Dayhoff Body Program.

### No representation, warranty, or guarantee of continued availability of Dayhoff Body Program

NEITHER DAYHOFF NOR THE AFFILIATED PROFESSIONAL ENTITIES MAKE ANY REPRESENTATIONS, WARRANTIES, OR GUARANTEES REGARDING THE CONTINUED AVAILABILITY OF THE DAYHOFF BODY PROGRAM. THE DAYHOFF BODY PROGRAM MAY BE DISCONTINUED AT ANY TIME AT THE SOLE DISCRETION OF DAYHOFF AND/OR THE AFFILIATED PROFESSIONAL ENTITIES. WE WILL ATTEMPT TO GIVE REASONABLE NOTICE OF ANY SUCH DISCONTINUATION SO THAT YOU MAY FIND A LOCAL PROVIDER WITH WHOM TO CONTINUE TREATMENT.

## **5. Registration and Account Creation**

Although certain parts of the Services are accessible without creating an account, you may be required to create an account to access and use certain parts of the Services. If you create an account, you agree to provide information that is accurate, complete and correct, and to accurately maintain and update any information about yourself that you have provided to Dayhoff. If you do not maintain such information, or Dayhoff has reasonable grounds to suspect as much, Dayhoff has the right to suspend or terminate your account and your use of the Services. You agree to keep confidential your username and password and to exit from your account at the end of each session. You are responsible for all activities that occur under your account and for maintaining the confidentiality of your password. You also agree to immediately notify Dayhoff of any unauthorized use of your username, password or any other breach of security that you become aware of involving or relating to the Services by emailing Dayhoff at [privacy@dayhoff.ai](mailto:privacy@dayhoff.ai). Dayhoff may take any and all actions it deems necessary or reasonable to maintain the security of the Services.

You are responsible for changing your password promptly if you think it has been compromised. You may not transfer or share your password with anyone, or create more than one account. You may not use anyone else's account at any time. Dayhoff explicitly disclaims liability for any and all losses and damages arising from your failure to comply with this Section.

Our Apps are intended for use only on mobile phones that run an unmodified manufacturer approved operating system. Using the Apps on a mobile phone with a modified operating system may undermine security features that are intended to protect your protected health information and other information from unauthorized or unintended disclosure. As a result, you may compromise your information if you use the App on a mobile phone that has been modified. Use of the App on a mobile phone with a modified operating system is a material breach of these Terms of Use.

## **6. Privacy**

Dayhoff understands the importance of confidentiality and privacy regarding your health information. Please see our Privacy Policy available on our main website for information about how we collect and use your information. The Privacy Policy is hereby incorporated into these Terms of Use by reference and constitute a part of these Terms of Use.

## **7. Ownership and License to Use the Services**

**Ownership.** As between Dayhoff and you, Dayhoff is the sole and exclusive owner of all right, title and interest in and to the Services and their content, features and functionality (including, without limitation, all information, software, text, displays,

images, video, audio, design, selection, arrangement and look and feel) ("Services Content"). You are not permitted to reproduce, publish, distribute, modify, reverse engineer, disassemble, create derivative works of, publicly display, publicly perform, republish, download, store, transmit, sell or participate in any sale of, or exploit in any way, in whole or in part, any of the Services or Services Content except as permitted by these Terms of Use or otherwise by Dayhoff expressly in writing. Any copy, modification, revision, enhancement, adaptation, translation, or derivative work of the Services or Services Content shall be owned solely and exclusively by Dayhoff or its licensors, including all intellectual property rights therein. You may not access or use for any commercial purposes any part of the Services or Services Content.

Certain names, logos, and other materials displayed in and through the Services may constitute trademarks, trade names, service marks or logos ("Marks") of Dayhoff or its affiliates. You are not authorized to use any such Marks without the express written permission of Dayhoff. Ownership of all such Marks and the goodwill associated therewith remains with us or our affiliates.

Your License. Subject to your compliance with these Terms of Use, we hereby grant to you a personal, limited, revocable, non-exclusive, and nontransferable right to view, download, access, and use the Services and Services Content solely for your personal and non-commercial use and only as permitted under these Terms of Use and the Privacy Policy. No other right, title, or interest in or to the Services or Services Content is transferred to you, and all rights not expressly granted are reserved by Dayhoff or its licensors.

## **8. User Content and Dayhoff's License to Use Such Content**

Except as provided in our Privacy Policy; or information governed by applicable federal and state-specific privacy laws and regulations; you understand and agree that any information you provide through the Services, whether by direct entry, submission, email or otherwise, including, but not limited to, data, questions, comments, forum communications, or suggestions/feedback, will be treated as non-confidential and non-proprietary and will become the property of Dayhoff and/or (i) the affiliated physician practices, or (ii) individual health providers utilizing the Services ("User Content").

Except as provided in our Privacy Policy or subject to any applicable laws, User Content may be used by Dayhoff for any purpose, including, without limitation, reproduction, solicitation, disclosure, transmission, publication, broadcast, and posting, and Dayhoff shall be free to use such User Content for any purpose whatsoever, including, without limitation, developing and marketing products using such information, without any compensation owed to you. You hereby grant Dayhoff, our service providers, our successors and assigns, our affiliated health care

providers, and their affiliated physician practices, the fully transferable and sublicensable right and license to use, reproduce, modify, analyze, perform, display, distribute, and otherwise disclose to third parties any data or information you submit on or through the Services for the purposes of providing Services to you; marketing Services to you; conducting research or analyses of such data; and designing, developing, implementing, modifying and/or improving new, current or future features, products and services of Dayhoff using such data. You understand that any User Content you publish in public forums will be viewable and copyable by other users of the forum and potentially the public at large.

WITHOUT LIMITATION OF THE FOREGOING, DAYHOFF DOES NOT ASSUME RESPONSIBILITY OR LIABILITY FOR THE USER CONTENT FOUND IN ANY PUBLIC FORUM, NOR FOR ANY CLAIMS, DAMAGES OR LOSSES RESULTING FROM ANY USE OF ANY PUBLIC FORUM OR THE USER CONTENT CONTAINED THEREIN.

You acknowledge, consent, and agree that we may access, monitor, preserve, and disclose your information and/or any User Content you submit or make available for inclusion on the Services, if required to do so by law or in a good faith belief that such access, preservation, or disclosure is permitted by law or reasonably necessary or appropriate for any of the following reasons: (1) to comply with legal process; (2) to enforce these Terms of Use, our Privacy Policy, or other contracts with you, including investigation of potential violations thereof; (3) to respond to claims that any content violates the rights of third parties; (4) to respond to your requests for customer service; and (5) to protect the rights, property, or personal safety of Dayhoff, its agents and affiliates, its users, and the public. This includes exchanging information with other companies and organizations for fraud protection, and spam/malware prevention, and similar purposes.

## **9. Copyright Notices**

Dayhoff reserves the right to remove any content or any other material or information available on or through our Services, at any time, for any reason. Dayhoff otherwise complies with the provisions of the Digital Millennium Copyright Act ("DMCA") applicable to Internet service providers (17 U.S.C. § 512, as amended), and responds to clear notices of alleged copyright infringement. This Section describes the procedure that should be followed to file a notification of alleged copyright infringement with Dayhoff.

Notification of Claimed Copyright Infringement. If you have objections to copyrighted content or material made available on or through our Services, you may submit a notification to [privacy@dayhoff.ai](mailto:privacy@dayhoff.ai)

Any notification to Dayhoff under 17 U.S.C. § 512(c) alleging copyright infringement must include all of the following information:

- An electronic or physical signature of the person authorized to act on behalf of the owner of the exclusive right being infringed
- An identification of the copyrighted work or other intellectual property that you claim has been infringed or, if multiple copyrighted works are covered by a single notification, a representative list of such works
- An identification of the content or material that you claim is infringing and where it is located on our Services
- Information sufficient for Dayhoff to contact you, such as your address, telephone number, and/or email address
- A statement by you that you have a good-faith belief that the use of the content or material of which you are complaining is not authorized by the copyright owner, its agent, or the law
- A signed statement by you that the above information in your notice is accurate and that, under penalty of perjury, you are the copyright owner or authorized to act on the copyright owner's behalf

## **10. Restrictions on Use**

You agree that in using or accessing the Services, you will not, and will not attempt to:

- impersonate any person or entity or otherwise misrepresent your affiliation with a person or entity
- violate any local, state, national or international law (including export laws)
- reverse engineer, disassemble, decompile, or translate any software or other components of the Services
- distribute, input, upload, transmit, or otherwise run or propagate any virus, application, Trojan horse, or any other harmful computer code that could damage or alter a computer, portable device, computer network, communication network, data, or the Services, or any other system, device, or property
- access or use the Services in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any third party
- use any robot, spider, scraper, or other automated means to access the Services for any purpose without our express prior written permission or bypass our robot exclusion headers or other measures we may use to prevent or restrict access to the Services
- license, sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make available to any third party the Services, Service Content, or User Content other than as expressly permitted herein

- create or develop competing products or services or for any other purpose that is to Dayhoff's detriment or commercial disadvantage
- damage, destroy, disrupt, disable, impair, overburden, interfere with, or otherwise impede or harm in any manner the Services, Service Content, or User Content, in whole or in part
- use framing techniques to enclose any trademark, logo, or the Services without our express prior written consent
- post, transmit or otherwise disseminate any content that, as we determine at our sole discretion: (i) is unlawful, harmful, harassing, fraudulent, threatening, abusive, libelous, defamatory, vulgar, obscene, hateful, violent, demeaning, intimidating, discriminatory, or racially, ethnically or otherwise objectionable, or infringes our or any third party's intellectual property or other rights, (ii) is derogatory or harmful to our reputation, the reputation of our licensors, affiliated healthcare providers, affiliated healthcare practices, or any of our or their respective officers, members, employees, representatives, licensors and/or suppliers, in any way; (iii) may incite violence or other unlawful activity; or (iv) is harmful to children in any manner; or (iv) attempts to obtain the personal information of other users
- harm, harass, threaten, abuse, defame, demean, discriminate against, or intimidate any affiliated health care provider who provides health care services related to the Services, as we determine in our sole discretion
- disrupt, interfere with, violate the security of, or attempt to gain unauthorized access to the Services or any computer network
- bypass, breach, avoid, remove, deactivate, impair, descramble, or otherwise circumvent any security device, protection, or technological measure implemented by Dayhoff or any of our service providers to protect the Services
- remove, delete, alter, or obscure any trademarks, specifications, warranties, or disclaimers, or any copyright, trademark, patent, or other intellectual property or proprietary rights notices from the Services or any Service Content or User Content
- use any manual process or automated device to monitor or copy any content made available on or through the Services for any unauthorized purpose except as permitted herein
- to transmit, or procure the sending of, any advertising or promotional material without our prior written consent, including any "junk mail", "chain letter" or "spam" or any other similar solicitation
- copy, duplicate, download, store in a retrieval system, publish, transmit or otherwise reproduce, transfer, distribute, store, disseminate, aggregate, use as a component of or as the basis for a database or otherwise use in any form or by any means any data, text, reports, or other materials related to Dayhoff or third-party content from the Services
- otherwise use the Services in any manner that exceeds the scope of use granted herein

- encourage or enable any other individual to do any of the foregoing

#### **11. Disclaimer of Warranties**

YOU EXPRESSLY AGREE THAT USE OF THE SERVICES IS AT YOUR SOLE RISK. YOU ACKNOWLEDGE AND AGREE THAT THE SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. DAYHOFF AND ITS AFFILIATES, INCLUDING WITHOUT LIMITATION ALL AFFILIATED PHYSICIAN PRACTICES, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, MANAGERS, PARTNERS, MEMBERS, EMPLOYEES, AND AGENTS (COLLECTIVELY "RELATED PERSONS") MAKE NO REPRESENTATIONS OR WARRANTIES AND EXPRESSLY DISCLAIM ANY AND ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES INCLUDING, BUT NOT LIMITED TO, ANY REPRESENTATIONS OR WARRANTIES WITH RESPECT TO MERCHANTABILITY, FITNESS FOR A PARTICULAR USE OR PURPOSE, NONINFRINGEMENT, TITLE, AVAILABILITY, SECURITY, OPERABILITY, CONDITION, QUIET ENJOYMENT, VALUE, ACCURACY OF DATA, FREEDOM FROM VIRUSES OR MALWARE, COMPLETENESS, TIMELINESS, FUNCTIONALITY, RELIABILITY, SEQUENCING OR SPEED OF DELIVERY OR SYSTEM INTEGRATION. WE MAKE NO WARRANTIES OR REPRESENTATIONS THAT YOUR USE OF THE SERVICES WILL NOT INFRINGE THE RIGHTS OF THIRD PARTIES.

TO THE FULLEST EXTENT OF APPLICABLE LAW, NEITHER DAYHOFF NOR ITS RELATED PERSONS WILL BE LIABLE FOR ANY LOSS OR DAMAGE CAUSED BY YOUR RELIANCE ON INFORMATION OBTAINED THROUGH THE SERVICES. IT IS YOUR RESPONSIBILITY TO EVALUATE THE ACCURACY, COMPLETENESS, TIMELINESS, RELIABILITY OR USEFULNESS OF THE SERVICES, SERVICES CONTENT, AND USER CONTENT. FURTHERMORE, DAYHOFF DOES NOT GUARANTEE THAT THE SERVICES WILL BE UNINTERRUPTED, OR FREE FROM ERROR, DEFECT, LOSS, DELAY IN OPERATION, CORRUPTION, CYBER ATTACK, VIRUSES, INTERFERENCE, HACKING, MALWARE, OR OTHER SECURITY INTRUSION, AND DAYHOFF DISCLAIMS ANY LIABILITY RELATING THERETO.

YOU UNDERSTAND AND AGREE THAT ANY CONTENT, MATERIAL AND/OR INFORMATION OBTAINED THROUGH THE USE OF THE SERVICES ARE USED AT YOUR SOLE RISK AND THAT YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER OR MOBILE PHONE OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF SUCH CONTENT, MATERIAL AND/OR INFORMATION, OR YOUR RELIANCE ON ANY SUCH CONTENT, MATERIAL, AND/OR INFORMATION.

## **12. Limitation of Liability**

YOU UNDERSTAND THAT TO THE EXTENT PERMITTED UNDER APPLICABLE LAW AND EXCEPT AS SET FORTH IN THIS SECTION, IN NO EVENT WILL DAYHOFF, ITS RELATED PERSONS OR LICENSORS BE LIABLE TO YOU OR TO ANY PARTY FOR ANY CLAIMS, LIABILITIES, LOSSES, COSTS OR DAMAGES UNDER ANY LEGAL OR EQUITABLE THEORY, WHETHER IN TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), CONTRACT, WARRANTY, STATUTE OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO, DAMAGES FOR LOSS OF REVENUES, PROFITS, GOODWILL, USE OR DATA, SERVICE INTERRUPTION, COMPUTER OR MOBILE PHONE DAMAGE, OR SYSTEM FAILURE, OR THE COST OF SUBSTITUTE PRODUCTS OR SERVICES, OR FOR ANY DAMAGES FOR PERSONAL OR BODILY INJURY OR EMOTIONAL DISTRESS, INCLUDING DEATH, ARISING OUT OF OR IN CONNECTION WITH ANY ACCESS, USE OF (OR INABILITY TO USE) THE SERVICES OR ANY SERVICES CONTENT, OR OTHER INTANGIBLE LOSSES ARISING OUT OF OR RELATED TO YOUR USE OF THE SERVICES. THIS IS TRUE EVEN IF DAYHOFF OR RELATED PERSONS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES.

IN NO EVENT SHALL DAYHOFF OR IT'S RELATED PERSONS' TOTAL LIABILITY TO YOU FOR ALL DAMAGES, LOSSES, AND CAUSES OF ACTION (WHETHER IN CONTRACT, TORT (INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE), OR OTHERWISE) EXCEED IN THE AGGREGATE, THE GREATER OF (I) ONE HUNDRED DOLLARS (\$100), OR (II) THE AMOUNT PAID BY YOU, IF ANY, FOR ACCESSING THE SERVICES IN THE TWELVE (12) MONTH PERIOD PRECEDING THIS APPLICABLE CLAIM.

Some jurisdictions do not allow the exclusion of certain warranties or the limitation or exclusion of liability for damages such as in this Section. Accordingly, some of these limitations may not apply to you. If you are a New Jersey resident, or a resident of another U.S. state that permits the exclusion of these warranties and liabilities, then the limitations in this Section specifically do apply to you.

## **13. Indemnification**

You agree to indemnify, defend, and hold harmless Dayhoff, its affiliates, its affiliated health care practices, its subsidiaries, and all of their directors, officers, employees, contractors, licensors, suppliers, representatives, proprietors, partners, shareholders, principals, agents, predecessors, successors, assigns, accountants, and attorneys harmless from and against any and all third-party suits, actions, claims, proceedings, damages, settlements, judgments, injuries, liabilities, obligations, losses, risks, costs, and expenses (including, without limitation, reasonable attorneys' fees, litigation



expenses, and accounting fees), relating to or arising from, or alleged to arise from, (i) your use of the Services, or your use of the materials or features available on the Services, in an unauthorized manner, (ii) your fraud, violation of law, negligence, or willful misconduct, or (iii) any breach by you of these Terms of Use.

#### **14. Third-Party Links and Features on the Services**

The Services may contain hyperlinks, plug-ins, products, or features operated by third parties ("Third-Party Services"). Such Third-Party Services are not under our control, therefore, we are not responsible for the information, products or services described by, or for the content or features of any such Third-Party Services. We are providing these Third-Party Services to you only as a convenience, and the inclusion of any Third-Party Services does not necessarily imply endorsement of the Third-Party Services or any association with its operators. Your use of these Third-Party Services is at your own risk, and we are not liable to you in any way, either directly or indirectly, for any content, errors, damage or loss caused by or in connection with use of or reliance on information contained in or provided to Third-Party Services. You may have arrived to the Services through a Third-Party Service, and you understand and agree that we are not responsible for the information, products or services described on those Third-Party Services and only these Terms of Use will apply to your use of or access to the Services.

Moreover, we are not involved in any actual transaction between any user and another user or third party, nor are we the agent of either for any purpose. As such, we will not be involved in resolving any disputes between any user and another user or third party relating to or arising out of any transaction between such parties. We urge users and third parties to cooperate with one another to resolve any such disputes. In the event that you have a dispute with one or more other users or third parties through your use of the Services, you release Dayhoff, its officers, employees, agents, and successors from claims, demands, and damages of every kind or nature, known or unknown, suspected or unsuspected, disclosed or undisclosed, arising out of or in any way related to such disputes and/or our Services.

#### **15. Changes to the Terms of Use and the Services**

The Services are continually under development, and Dayhoff reserves the right to review or remove any part of these Terms of Use in its sole discretion at any time and without prior notice to you. You should check the Terms of Use from time to time when you use the Services to determine if any changes have been made. Any changes to these Terms of Use are effective upon posting to the Services, unless applicable law requires us to provide additional notice or take other actions before such changes can become effective. If you disagree with these Terms of Use, your

sole and exclusive remedy is to discontinue your use of the Services. Your continued use after a change has been posted constitutes your acceptance of the changes.

You acknowledge and agree that: (1) all or any part of the Services may not be accessible at any time, for any period, or for any reason; and (2) Dayhoff will not be liable if for any reason all or any part of the Services are unavailable at any time or for any period. Dayhoff reserves the right at any time and for any reason to modify, or temporarily or permanently discontinue, the Services or any portion thereof, with or without notice. You agree that Dayhoff shall not be liable to you or to any third party for any modification, suspension, or discontinuance of the Services.

## **16. Payments**

You agree to pay all fees due for services requested at checkout and pursuant to all payment terms presented to you when engaging in transactions. Prices are subject to change at any point in our sole discretion. You will see a prompt for your payment details, such as your credit card information and any promotional codes you may have. By entering your payment information and submitting your request, you authorize us, our affiliates, or our third-party payment processors to charge the amount due, including recurring fees associated with Subscription Services (as defined below).

You understand and agree that you are responsible for all fees due to receive health care services and pharmacy services, including any fees charged by the health care organization(s) or provider(s) that provide services to you in connection with the Services. Your payments to Dayhoff may include fees charged by the health care organization(s) or provider(s) for health care services and/or pharmacy services, which Dayhoff collects on their behalf. Any health care services or pharmacy services not provided by us, an affiliated physician practice, or the Dayhoff Pharmacy Network, or otherwise made available through the Services are not included in the payments collected by Dayhoff and you may be separately charged by the applicable health care organization(s) and/or provider(s) for such services. In the event that your credit card expires or Dayhoff, our affiliates, or our third-party payment processors are unable to process your payment, you may receive notice for you to provide an alternative payment method. Dayhoff and/or the health care organization(s) and/or provider(s) have no obligation to provide any health care services or pharmacy services unless and until full payment has been received and/or verified. You are responsible for keeping your payment information (such as credit card number and billing address) accurate and up to date at all times.

Certain products or services offered on the Services may be offered on a subscription basis ("Subscription Services"). For Subscription Services, your payment method will be automatically charged at regular intervals as described

during the checkout process for the applicable Subscription Services. Depending on the specific Service you select, you may be charged at the time you submit a request (for instance, a treatment request), and the products or services purchased will begin to be provided after all onboarding steps are complete (for instance, after your treatment request is approved by a provider and you provide all required information). For other Services, you may not be charged until all required onboarding steps are completed.

You may cancel a Subscription Service to prevent future renewals at any time before the cancellation cutoff date as indicated to you at the time you purchase a Subscription Service. You will also be informed about how you can cancel these Subscription Services.

EXCEPT AS OTHERWISE SET FORTH IN ANY RETURN OR REFUND POLICY PROVIDED TO YOU ON THE SERVICES AND AS EXPLAINED BELOW, YOU ACKNOWLEDGE AND AGREE THAT DUE TO THE NATURE OF THE PRODUCTS AND SERVICES PURCHASABLE THROUGH THE SERVICES ANY APPLICABLE FEES AND OTHER CHARGES ARE NOT REFUNDABLE IN WHOLE OR IN PART. YOU ARE FULLY LIABLE FOR ALL CHARGES TO YOUR ACCOUNT, INCLUDING ANY UNAUTHORIZED CHARGES.

You will automatically be refunded if we have already charged your payment method and you are subsequently deemed unsuitable for treatment or we reject your treatment request for any other reason. These refunds (along with all refunds described in these Terms or otherwise provided by Dayhoff) may take 5 business days or longer to process.

If you submit a treatment request but you do not complete additional onboarding steps we require in order to process your request for certain Subscription Services, your treatment request may expire. If your payment method has already been charged, you will automatically be refunded when a treatment request expires. In order to receive the desired Services, you will need to initiate a new treatment request.

When you submit a treatment request, your provider may suggest an alternative treatment plan that better aligns with your health needs. When this occurs, you will be prompted to accept the suggested alternative. If you accept the suggested alternative treatment plan and your payment method has already been charged, the initial charge will be refunded automatically, and you will incur a new charge for the alternative treatment plan. If you take no action and do not accept the alternative treatment plan, your treatment request may expire (at which point you will

automatically be refunded if your payment method has already been charged). Once expired, in order to receive the desired Services, you will need to initiate a new treatment request.

## **17. Termination**

The Terms of Use will remain in full force and effect as long as you continue to access or use the Services. You may terminate the Terms of Use at any time by discontinuing use of the Services. Your permission to use the Services automatically terminates if you violate these Terms of Use.

Dayhoff may terminate or suspend any of the rights granted by these Terms of Use and your access to and use of the Services with or without prior notice, for any reason, and at any time, including for violations of these Terms of Use. The following provisions survive the expiration or termination of these Terms of Use for any reason whatsoever: Disclaimer of Warranties; Limitation of Liability; Indemnification; Governing Law, Dispute Resolution, Arbitration, Venue, Severability of Provisions; No Waiver; and Assignment.

Subject to applicable law, Dayhoff reserves the right to maintain, delete or destroy all communications and materials posted or uploaded to the Services pursuant to its internal record retention and/or content destruction policies. After such termination, Dayhoff will have no further obligation to provide the Services, except to the extent an affiliated professional entity is obligated to provide you access to your health records or is required to provide you with continuing care under applicable legal, ethical and professional obligations to you. You agree that if your use of the Services is terminated pursuant to these Terms of Use, you will not attempt to use the Services in any way, and further agree that if you violate this restriction after such termination, you will indemnify and hold Dayhoff harmless from any and all liability that Dayhoff may incur therefore.

## **18. Governing Law; Severability**

**Governing Law.** These Terms of Use and your use of the Services shall be governed by the laws of the State of Texas, without giving effect to the principles of conflict of laws. Subject to the requirement to arbitrate set forth in Section 17, exclusive jurisdiction for all disputes that do not require arbitration will be the state and federal courts located in Dallas, Texas, and you consent to the jurisdiction of those courts.

**Severability.** All parts of these Terms of Use apply to the maximum extent permitted by law. Dayhoff and you 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 these Terms of Use will not affect the validity and enforceability of the remaining provisions. The section headings are for convenience only and do not have any force or effect.

### **19. Dispute Resolution: Binding Arbitration Clause and Class Action Waiver**

PLEASE READ THIS SECTION CAREFULLY. IT MAY SIGNIFICANTLY AFFECT YOUR LEGAL RIGHTS—INCLUDING YOUR RIGHT TO FILE A LAWSUIT IN COURT (BY REQUIRING YOUR DISPUTE TO BE SUBMITTED TO ARBITRATION) AND LIMITING YOUR RIGHTS TO RESOLVE YOUR DISPUTE AS PART OF A CLASS.

As detailed herein, the Terms of Use mandate that all disputes between you and Dayhoff be resolved first through an informal dispute resolution process. In the event informal resolution fails, the Terms of Use further mandate that all disputes (except those identified in Section 19.3) be formally resolved through binding arbitration. Binding arbitration means that an arbitrator, and not any federal, state or local court or agency, shall have exclusive authority to resolve such disputes. Consequently, you should read the entirety of Section 19 carefully as it may significantly affect your legal rights.

#### 19.1 Informal Dispute Resolution.

For any and all disputes between you and Dayhoff, the parties shall use their best efforts to informally settle the dispute, claim, question, or disagreement and to engage in good faith negotiations. Failure to engage in this process could result in the award of fees against you in arbitration.

To initiate informal dispute resolution, the initiating party must first send a written description of the dispute to the other party. For any dispute against Dayhoff that you initiate, you agree to send to Dayhoff (a) a written description of the dispute and (b) the email address(es) associated with your account through the following email address: [privacy@dayhoff.ai](mailto:privacy@dayhoff.ai). The written description must be on an individual basis and provide, at minimum, the following information: your name; a description of the nature or basis of the claim or dispute; and the specific relief sought. For any dispute that Dayhoff initiates, we will send our written description of the dispute to the email address associated with your use of the Services.

If the parties' dispute is not resolved within sixty (60) days after receipt of the written description of the dispute by a party, you and Dayhoff agree to resolve any remaining dispute through the additional dispute resolution provisions set forth below.

A good faith engagement in informal dispute resolution shall be and is a prerequisite and condition precedent to either party initiating a lawsuit or arbitration. The parties agree that any applicable statute of limitations period and filing fees or other deadlines will be tolled while the parties engage in this informal dispute resolution process.

## 19.2 Binding Arbitration

After the parties have engaged in a good-faith effort to resolve their dispute(s) in accordance with the Informal Dispute Resolution process (Section 19.1), and only if those efforts fail, then either party may initiate arbitration as set forth in this Section.

If you determine to initiate arbitration, a copy of the arbitration demand must be emailed to [privacy@dayhoff.ai](mailto:privacy@dayhoff.ai). If Dayhoff is initiating arbitration, it will serve a copy of the demand to the email address associated with your use of the Dayhoff Services.

(a) Mutual Arbitration Agreement Except as set forth in Section 19.3 below, you and Dayhoff agree that all claims, disputes, or disagreements that may arise out of or relating to the interpretation, applicability, enforceability, formation, or performance of these Terms of Use—including but not limited to any claim that all or any part of these terms are void or voidable, whether a claim is subject to arbitration, and any dispute regarding the payment, non-payment, or timing of any administrative or arbitrator fees—shall be resolved exclusively through binding arbitration in accordance with this Section 19.2 (collectively, the “Arbitration Agreement”). The arbitrator shall be empowered under this Arbitration Agreement to grant whatever relief would be available in a court under law or in equity. The arbitrator has the right to impose sanctions in accordance with the arbitration provider’s rules and procedures for any frivolous claims or submissions the arbitrator determines have not been filed in good faith, as well as for a party’s failure to comply with this Section 19.2.

This Arbitration Agreement is intended to be interpreted broadly, and it applies to claims that arose, were asserted, or involve facts occurring before the existence of this Arbitration Agreement or any prior agreement as well as claims that may arise after the termination of this Arbitration Agreement, in accordance with the notice opt-out provisions set forth in Sections 19.4 and 19.5.

This Arbitration Agreement is governed by the Federal Arbitration Act (“FAA”) in all respects and evidences a transaction involving interstate commerce. You and Dayhoff expressly agree that the FAA shall exclusively govern the interpretation and

enforcement of this Arbitration Agreement. If for whatever reason the rules and procedures of the FAA cannot apply, the state law governing arbitration agreements in the state in which you reside shall apply.

Except as set forth in Section 19.2(c) below, if any provision of this Arbitration Agreement is found by an arbitrator or court of competent jurisdiction to be invalid, the parties nevertheless agree that the arbitrator or court should endeavor to give effect to the parties' intentions as reflected in the provision, and the other provisions thereof remain in full force and effect.

(b) WAIVER OF RIGHTS INCLUDING JURY TRIAL THE PARTIES UNDERSTAND THAT ARBITRATION MEANS THAT AN ARBITRATOR AND NOT A JUDGE OR JURY WILL DECIDE THE CLAIM, AND THAT RIGHTS TO DISCOVERY AND APPEALS MAY BE LIMITED IN ARBITRATION. THE PARTIES FURTHER UNDERSTAND THAT THE COSTS OF ARBITRATION COULD EXCEED THE COST OF LITIGATION IN SOME INSTANCES.

YOU HEREBY ACKNOWLEDGE AND AGREE THAT BY AGREEING TO THESE TERMS AND ARBITRATION AGREEMENT, YOU AND DAYHOFF ARE EACH WAIVING THE RIGHT TO A TRIAL BY JURY TO THE MAXIMUM EXTENT PERMITTED BY LAW.

(c) CLASS ARBITRATION AND COLLECTIVE RELIEF WAIVER. YOU AND DAYHOFF ACKNOWLEDGE AND AGREE THAT, TO THE MAXIMUM EXTENT ALLOWED BY LAW, AND EXCEPT AS OTHERWISE SET OUT IN THIS SECTION 19.2(c) AND SECTION 19.2(e)(vi) BELOW, ANY ARBITRATION SHALL BE CONDUCTED IN AN INDIVIDUAL CAPACITY ONLY AND NOT AS A CLASS OR OTHER CONSOLIDATED ACTION, AND THE ARBITRATOR MAY AWARD RELIEF ONLY IN FAVOR OF THE INDIVIDUAL PARTY SEEKING RELIEF AND ONLY TO THE EXTENT NECESSARY TO RESOLVE AN INDIVIDUAL PARTY'S CLAIM; NOTWITHSTANDING THIS ACKNOWLEDGEMENT AND AGREEMENT, ANY ARBITRATION INVOLVING YOU MAY PROCEED ON A CONSOLIDATED BASIS IF AND ONLY IF DAYHOFF PROVIDES ITS CONSENT TO CONSOLIDATE IN WRITING.

If there is a final judicial determination that applicable law precludes enforcement of this Paragraph's limitations as to a particular remedy, then that remedy (and only that remedy) must be severed from the arbitration and may be sought in court. The parties agree, however, that any adjudication of remedies not subject to arbitration shall be stayed pending the outcome of any arbitrable claims and remedies.

If there is a final judicial determination that either the Class Arbitration and Collective Relief Waiver in this Section, or that the provisions in this Section 19.2 are not enforceable as to a particular claim or request for relief, then the parties agree that that particular claim or request for relief may proceed in court as provided herein, but shall be severed and stayed pending arbitration of the remaining claims. This provision does not prevent you or Dayhoff from participating in a class-wide settlement of claims.

(d) Arbitration Location. If you are a resident of the United States, arbitration will take place in the county where you reside. For residents in Canada (and anywhere else outside the United States), arbitration shall be initiated in the County of Dallas, State of Texas, United States of America, unless you and Dayhoff otherwise agree or unless the designated arbitrator determines that such venue would be unreasonably burdensome to any party, in which case the arbitrator shall have the discretion to select another venue.

For any arbitration conducted in the County of Dallas, State of Texas, United States of America, You and Dayhoff agree to submit to the personal jurisdiction of any federal or state court in Dallas, Texas, in order to compel arbitration, to stay proceedings pending arbitration, or to confirm, modify, vacate or enter judgment on the award entered by the arbitrator; and in connection with any such proceeding, further agree to accept service of process by U.S. or certified mail and hereby waive any and all jurisdictional and venue defenses otherwise available

(e) The Arbitration Rules.

(i) The Provider.

The arbitration will be administered by National Arbitration and Mediation (“NAM”) and resolved before a single arbitrator. If NAM is not available to arbitrate, the parties will select an alternative arbitration provider.

Except as modified by this “Dispute Resolution” provision, NAM will administer the arbitration in accordance with the NAM Comprehensive Dispute Resolution Rules and Procedures, Fees For Disputes When One of the Parties is a Consumer and the Mass Filing Dispute Resolution Rules and Procedures in effect at the time any demand for arbitration is filed with NAM, excluding any rules or procedures governing or permitting class or representative actions. The applicable NAM rules and procedures are available at <http://www.namadr.com> or by emailing National Arbitration and Mediation’s Commercial Dept at [commercial@namadr.com](mailto:commercial@namadr.com).



You are responsible for your own attorneys' fees unless the arbitration rules and/or applicable law provide otherwise.

The parties agree that NAM has discretion to reduce the amount or modify the timing of any administrative or arbitration fees due under NAM's Rules where it deems appropriate, provided that such modification does not increase the costs to you, and you further agree that you waive any objection to such fee modification. The parties also agree that a good-faith challenge by either party to the fees imposed by NAM does not constitute a default, waiver, or breach of this Section 19 while such challenge remains pending before NAM the arbitrator, and/or a court of competent jurisdiction, and that any and all due dates for those fees shall be tolled during the pendency of such challenge.

(ii) Arbitration Demand Must Contain Sufficient Information.

Any arbitration demand or counterclaim asserted by either party must contain sufficient information to provide fair notice to the other party of the asserting party's identity, the claims being asserted, and the factual allegations on which they are based, and must include proof that the claimant is party to this Arbitration Agreement and to these Terms of Use. The arbitrator and/or NAM may require amendment of any demand or counterclaim that does not satisfy these requirements. The arbitrator has the right to impose sanctions for any claims the arbitrator determines to be frivolous or improper (under the standard set forth in Federal Rule of Civil Procedure 11), including for any claim filed on behalf of a claimant who is not a party to this Arbitration Agreement or to these Terms of Use.

(iii) Arbitration Conducted on Papers in Some Circumstances.

If the amount in controversy does not exceed \$10,000 and you do not seek injunctive or declaratory relief, then the arbitration will be conducted solely on the basis of documents that you and Dayhoff submit to the arbitrator, unless the arbitrator determines that a hearing is necessary. If the amount in controversy exceeds \$10,000 or seeks declaratory or injunctive relief, either party may request (or the arbitrator may determine) to hold a hearing, which shall be via videoconference or telephone conference unless the parties agree otherwise.

(iv) Dispositive Motions.

Subject to the applicable NAM rules and procedures, the parties agree that the arbitrator will have the discretion to allow the filing of dispositive motions if they are likely to efficiently resolve or narrow issues in dispute.

(v) Batching.

To increase the efficiency of administration and resolution of arbitrations, in the event 100 or more similar arbitration demands (those asserting the same or substantially similar facts or claims, and seeking the same or substantially similar relief) presented by or with the assistance or coordination of the same law firm(s) or organization(s) are submitted to NAM (or another arbitration provider selected in accordance with Section 19.2(e)(i) if NAM is unavailable) against Dayhoff within reasonably close temporal proximity (“Mass Filing”), the parties agree (A) to administer the Mass Filing in batches of 100 demands per batch (to the extent there are fewer than 100 arbitration demands left over after the batching described above, a final batch will consist of the remaining demands) with only one batch filed, processed, and adjudicated at a time; (B) to designate one arbitrator for each batch; (C) to accept applicable fees, including any related fee reduction determined by NAM (or another arbitration provider selected in accordance with 19.2(e)(i) if NAM is unavailable) in its discretion; (D) that no other demands for arbitration that are part of the Mass Filing may be filed, processed, or adjudicated until the prior batch of 100 is filed, processed, and adjudicated; (E) that fees associated with a demand for arbitration included in a Mass Filing, including fees owed by Dayhoff and the claimants, shall only be due after your demand for arbitration is included in a set of batch proceedings and that batch is properly designated for filing, processing, and adjudication; and (F) that the staged process of batched proceedings, with each set including 100 demands, shall continue until each demand (including your demand) is adjudicated or otherwise resolved. If your demand for arbitration is included in the Mass Filing, any statute of limitation applicable to your claims will remain tolled until your demand for arbitration is decided, withdrawn, or settled.

Arbitrator selection for each batch shall be conducted to the greatest extent possible in accordance with the applicable NAM rules and procedures for such selection, and shall be subject to any rights to strike an arbitrator provided under applicable state law if the rights granted by law exceed those provided for in the NAM rules, and the arbitrator will determine the location where the proceedings will be conducted.

You agree to cooperate in good faith with Dayhoff and the arbitration provider to implement such a “batch approach” or other similar approach to provide for an efficient resolution of claims, including the payment of combined reduced fees, set by NAM in its discretion, for each batch of claims. The parties further agree to cooperate with each other and the arbitration provider or arbitrator to establish any

other processes or procedures that the arbitration provider or arbitrator believe will provide for an efficient resolution of claims. For example, if the number of cases filed makes batches of 100 cases too small for the prompt resolution of all filed claims, you and we agree that NAM may increase or decrease the batch size, or transfer a case between batches in the reasoned discretion of the NAM procedural arbitrator. Any and all disagreements between the parties as to whether this provision applies or as to the process or procedure for batching shall be resolved by a NAM procedural arbitrator.

This “Batch Arbitration” provision shall in no way be interpreted as increasing the number of claims necessary to trigger the applicability of NAM’s Mass Filing Supplemental Dispute Resolution Rules and Procedures or authorizing class arbitration of any kind.

(vi) No Class or Consolidated Arbitration Absent Written Consent.

Unless Dayhoff otherwise consents in writing, which it may do on a case-by-case basis, Dayhoff does not agree or consent to class arbitration, private attorney general arbitration, or arbitration involving joint or consolidated claims under any circumstances, except as set forth in Section 19.2(c) and this Section 19.2(e)(vi).

(vii) Arbitration Award.

The arbitrator will render an award within the time frame specified in the applicable NAM rules and procedures. The arbitrator’s decision will include the essential findings and conclusions upon which the arbitrator based the award. Judgment on the arbitration award may be entered in any court having jurisdiction thereof. The arbitrator will have the authority to award monetary damages on an individual basis and to grant, on an individual basis, any non-monetary remedy or relief available to an individual to the extent available under applicable law, the arbitral forum’s rules, and this Arbitration Agreement. The parties agree that the damages and/or other relief must be consistent with Section 19.2(c) above, and also must be consistent with the terms of the “Limitation of Liability” section of these Terms of Use as to the types and the amounts of damages or other relief for which a party may be held liable. No arbitration award or decision will have any preclusive effect as to issues or claims in any dispute with anyone who is not a named party to the arbitration. Attorneys’ fees will be available to the prevailing party in the arbitration only if authorized under applicable substantive law governing the claims in the arbitration.

19.3 Exceptions to Arbitration.

Notwithstanding the parties' agreement to resolve all disputes through binding arbitration as set forth in Section 19.2:

(a) IP Disputes.

Either party's claims of infringement or misappropriation of the other party's patent, copyright, trademark, or trade secret, shall be exclusively brought in the state and federal courts located in the City and County of Dallas, Texas.

(b) Small Claims Court and Statutes of Limitation.

Either party may elect to have disputes or claims resolved in a small claims court regardless of what forum the filing party initially chose, provided the disputes or claims are within the scope of that court's jurisdiction.

Either party may also seek a declaratory judgment or other equitable relief in a court of competent jurisdiction regarding whether a party's claims are time-barred or may in fact be brought in small claims court. Seeking such relief shall not waive a party's right to arbitration under this agreement, and any filed arbitrations related to any action filed pursuant to this paragraph shall automatically be stayed (and any applicable statute of limitations tolled) pending the outcome of such action.

(c) Jurisdiction/Service of Process.

For any dispute not subject to arbitration under this Section 19, you and Dayhoff agree to submit to the personal and exclusive jurisdiction of and venue in the federal and state courts located in Dallas, Texas. You further agree to accept service of process by U.S. or certified mail, and hereby waive any and all jurisdictional and venue defenses otherwise available.

19.4 30-Day Right to Opt Out.

You have the right to opt-out and not be bound by the arbitration and class action waiver provisions set forth above by sending written notice, signed by you, of your decision to opt-out to the following address: [privacy@dayhoff.ai](mailto:privacy@dayhoff.ai). The notice must be sent within 30 days of March 1, 2025 or your first use of the Services, whichever is later; otherwise, you shall be bound to arbitrate disputes in accordance with the terms of Section 19.2. If you opt-out of the arbitration provisions, Dayhoff also will not be bound by them.

If you opt out of the Arbitration Agreement, you may exercise your right to a trial by jury or judge, as permitted by applicable law, but any prior existing agreement to arbitrate disputes under a prior version of the Arbitration Agreement will not apply to claims not yet filed. If Dayhoff changes this "Dispute Resolution" section after the date you first accepted this Agreement (or accepted any subsequent changes to this Agreement), you agree that your continued use of the Services 30 days after such change will be deemed acceptance of those changes. If you do not agree to such change, you may opt out of the Arbitration Agreement by providing notice as described in Section 19.4.

Dayhoff will continue to honor any valid opt outs if you opted out of arbitration in a prior version of the Terms pursuant to the requirements set forth in that version. If you do not timely opt out of this Arbitration Agreement, such action shall constitute mutual acceptance of the terms of these "Dispute Resolution" provisions by you and Dayhoff.

#### 19.5 Changes to this Section.

Dayhoff will provide 30 days' notice of the date of any material changes to this Section 19. Changes will become effective on the 30th day and apply to all claims not yet filed. If you continue to use the Services after the 30th day, you agree that any unfiled claims of which Dayhoff does not have actual notice are subject to the revised clause.

### **20. Communications by Text Message and Email**

By opting-in to receive text (SMS) messages from Dayhoff or by sending Dayhoff an initial text message (an "SMS Enrollment"), you consent to receiving text messages regarding your Dayhoff account and use of the Services. These text messages may include order confirmations, shipping notifications, messages from your healthcare provider, and other transactional messages, as well as promotional and marketing notifications, to the extent you have opted-in to receive such messages from Dayhoff.

With your SMS Enrollment, you represent and understand that: (1) you are the owner or authorized user of the mobile device you used in order to initiate the SMS Enrollment, (2) you are authorized to approve any applicable charges in connection with the text messages you send to and receive from Dayhoff, (3) you will be responsible for all messaging and other data charges that may apply for any text messages sent to you from Dayhoff, or from Dayhoff to you, and (4) neither Dayhoff, nor your or Dayhoff's mobile carriers, will be liable for delayed or undelivered messages.

Note that access to the Services is not conditioned upon your consent to receive marketing or promotional text messages from Dayhoff, and you can opt-out of any of Dayhoff's SMS services at any time by texting "STOP" to the message received, from the mobile device that is subscribed to receive the SMS messages. After you send the text message "STOP" to us, we may send you one final text message to confirm that you have been unsubscribed. If you have opted-in to receive more than one type of text message from Dayhoff, you will need to opt-out of each Dayhoff SMS service to which you are subscribed. Until you have done so, you may continue to receive the types of text messages from Dayhoff that you have opted-in to receive but have not unsubscribed from.

You also understand that while Dayhoff takes your privacy and the security of your health and other sensitive information very seriously, the transmission of information over the internet and mobile networks is not 100% secure. Text messages and emails that you send to or receive from Dayhoff are not encrypted, which means that it is possible they may be intercepted by third parties. If you choose to send or receive information about your health or any other sensitive information by text message or email, you do so at your own risk. By initiating an SMS Enrollment, you consent to sending text messages to Dayhoff, and receiving text messages from Dayhoff, that are not encrypted. Likewise, by emailing Dayhoff or giving Dayhoff your email, you consent to receiving unencrypted emails messages from Dayhoff.

If you are experiencing any issues with Dayhoff's text messaging or email services, or if you have any concerns about sending or receiving any sensitive information through text or email, please contact us directly at [privacy@dayhoff.ai](mailto:privacy@dayhoff.ai). If you have questions specific to your text or data plan, please contact your wireless provider.

## **21. Miscellaneous Terms**

**No waiver.** No waiver by Dayhoff of any term or condition set forth in these Terms of Use shall be deemed a further or continuing waiver of such term or condition or a waiver of any other term or condition, and any failure by Dayhoff to assert a right or provision under these Terms of Use shall not constitute a waiver of such right or provision.

**No agency relationship.** Neither these Terms of Use, nor any Services Content, materials or features of the Services create any partnership, joint venture, employment, or other agency relationship between us and you. You may not enter into any contract on our behalf or bind us in any way.

**Remedies.** You agree that any violation, or threatened violation, by you of these Terms of Use constitutes an unlawful and unfair business practice that will cause us

irreparable and unquantifiable harm. You also agree that monetary damages would be inadequate for such harm and consent to our obtaining any injunctive or equitable relief that we deem necessary or appropriate. These remedies are in addition to any other remedies we may have at law or in equity.

**Assignment.** You may not assign any of your rights under these Terms of Use, and any such attempt will be null and void. Dayhoff and its affiliates may, in their individual discretion, transfer, without further consent or notification, all contractual rights and obligations pursuant to these Terms of Use if some or all of the business of Dayhoff is transferred to another entity by way of merger, sale of its assets, or otherwise.

**Notice for California Users.** If you are a California resident, you hereby waive California Civil Code §1542, which says: "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor." This release includes the criminal acts of others.

**Headings.** The heading references herein are for convenience purposes only, and shall not be deemed to limit or affect any of the provisions hereof.

**Entire Agreement.** This is the entire agreement between you and Dayhoff relating to the subject matter herein and supersedes all previous communications, representations, understandings and agreements, either oral or written, between the parties with respect to said subject matter, excluding any other agreements that you may have entered into with Dayhoff.

## **22. Contact Us**

If you have any questions about these Terms of Use, please contact us at:

[privacy@dayhoff.ai](mailto:privacy@dayhoff.ai)

## **23. Notice to Patients - Open Payments Database**

For informational purposes only, a link to the federal Centers for Medicare and Medicaid Services (CMS) Open Payments web page is provided here. The federal Physician Payments Sunshine Act requires that detailed information about payment and other payments of value worth over ten dollars (\$10) from manufacturers of drugs, medical devices, and biologics to physicians and teaching hospitals be made available to the public. You may search this federal database for payments made to

physicians and teaching hospitals by visiting this website:  
<https://openpaymentsdata.cms.gov/>