

iTakeControl Terms of Use

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Introduction

Welcome to iTakeControl®. These Terms of Use apply to the use of all iTakeControl Applications and Services, including but not limited to Mobile Application (the “**App**”), the iTakeControl websites www.itakecontrolhealth.com (collectively, the “**Websites**”), and the following web-based tools and services: the iTakeControl Clinical Study Management Portal for Healthcare professionals, clinical trial managers, caregivers and patients and related clinical study mobile engagement applications and tools, such as e-Consent Forms, videos, or surveys, etc. (collectively, the “**Platform**”). We refer to the App, the Websites, and the Platform collectively as the “**Solutions.**” We also create private, customized versions of the App, the Websites, and the tools and services comprising the Platform for the delivery of specified services to specified clients pursuant to services agreements we enter with those clients. These private, contract-built versions of the App, Websites, and Platform are included in the term Solutions. The Solutions are offered by Daylan Digital LLC and its subsidiary companies. For convenience in these Terms of Use, we refer to Daylan Digital LLC and its subsidiary companies collectively with the pronouns by the names “**iTakeControl**” and

“ITC” and by the pronouns **“us,” “we,” “our,”** and similar plural first-person pronouns. Users are referred to in these Terms of Use with the pronouns **“you”** and **“your.”** These Terms of Use are a legal agreement between us and you, which you enter into by using any of the Solutions. If there is a contradiction or inconsistency between these Terms of Use and any other written and signed agreement between us and any user, the provisions of the other agreement will prevail as between us and that user only.

PLEASE READ THESE TERMS OF USE CAREFULLY BEFORE USING ANY OF THE SOLUTIONS.

These Terms of Use constitute a legal agreement between you and us. By using any of the Solutions, you confirm and acknowledge your acceptance of, and agreement to, these Terms of Use. If you do not agree to all of these Terms of Use, do not use any of the Solutions.

We may revise and update these Terms of Use at any time. You should check these Terms of Use periodically. Your continued usage of any of the Solutions after any change to these Terms of Use will mean you accept those changes. The modification or update of the Terms of Use will be effective when an updated or modified version is made available on our Solutions; even if notification of an update is not provided to you.

THESE TERMS OF USE REQUIRE ARBITRATION ON AN INDIVIDUAL BASIS TO RESOLVE DISPUTES, AND FORBID JURY TRIALS AND CLASS ACTIONS. THESE TERMS OF USE ALSO LIMIT THE REMEDIES AVAILABLE TO YOU IN THE EVENT OF A DISPUTE. More detailed statements about these important waivers are contained in Section 20 (Dispute Resolution) and Section 14 (Disclaimer of Warranties and Our Liability).

Our Privacy Policy is incorporated into these Terms of Use, as if the full text of that policy were included in this agreement. By using any of the Solutions, you signify your assent to our Privacy Policy. If you do not agree with the entirety of the Privacy Policy, do not use any of the Solutions.

1. We Do Not Provide Medical Advice.

- 1.1** We do not Provide Medical Advice or Service. The contents and functionality of the Solutions, such as text, graphics, images, videos, and other material included in the Solutions (**“Content”**) are for informational, data management, and communications purposes only. The Content is not a substitute for professional medical advice, diagnosis, or treatment, and you should not rely on it as such.
- 1.2** Consult Your Own Health Care Provider. Always seek the advice of your physician or other qualified health care provider with any questions you may have regarding a medical condition. Never disregard professional medical advice or delay in seeking it because of something you have read on any of the Solutions.
- 1.3** Third-Party References. We do not recommend or endorse any specific tests, physicians, products, procedures, opinions, or other information that may be mentioned in the Solutions. Reliance on any information provided by us, our employees, others appearing within the Solutions at our invitation, or other visitors to, or users of the Solutions, is solely at your own risk.
- 1.4** Emergencies. Our goal in offering the Solutions is to provide digital tools to help our users manage their disease, disorder, or conduct a research study. However, neither we, nor the Solutions, are capable of real time intervention or interaction in emergent situations. We do not have human operators standing by, and our Solutions do not include links to third-party services, providers, or responders for purposes of real time responses to questions, concerns, or events. If you think you may have a medical emergency, call your doctor or other health care professional or emergency services (e.g. 911) immediately.

2. Communicating with Us.

- 2.1** “Contact Us” Links. Each of the Solutions provides a; Contact Us link through which users may communicate with us. Our intent in providing this functionality is to enable users to request general information about the Solutions. When users communicate with us through these links, we receive those communications as e-mails. We do not promise to respond to user requests or statements submitted to us in this manner in any time frame or at all. Users must not rely on the “Contact Us” links/functionality provided with any of the Solutions as a means of communicating important or time-sensitive information to us or as a means of eliciting important, critical, or any other responses or actions from us.
- 2.2** More Formal Notifications to Us. Instructions for communicating with us more formally for various purposes are contained in Section 17 (Certain Complaints Regarding Content), Section 20 (Dispute Resolution), and Section 21 (Notices to Us).

3. Protecting the Privacy of Children – Solutions Intended for Adults Only.

- 3.1** Definition. For purposes of these Terms of Use and our Privacy Policy, the term “child” means a person who has not yet achieved the chronological age of eighteen (18). We also use the term “under age” to refer to a person who is a child; we use the term adult or of “legal age” to refer to a person who is at least eighteen (18) years old.
- 3.2** Use by Children Generally Not Intended or Promoted; Exception for Children’s Clinical Trials. Except as described below in this Section 4.2:
- The Solutions are not intended or designed for children;
 - We will not include design elements in the Solutions for the purpose of attracting children to the Solutions;
 - We intend that the Solutions be used only by adults;
 - We do not knowingly collect through the Solutions any personal information from any underage person, except as authorized by a research study approved by an institutional review board described below; and
 - If we obtain actual knowledge that we have collected personal information from an underage person through the Solutions other than as outlined below, we will exercise commercially reasonable efforts to delete this information from our data base or render it inaccessible or irretrievable by ordinary data access and retrieval methodologies.

The only exception to the foregoing statements is in the context of clinical trials intended to enroll children as patients. In these instances, the written informed consent instruments prepared by the companies sponsoring the clinical trials and signed by the patients or their legal guardians, as applicable, describe the information (which would include information about the children enrolled as patients in the clinical trials) collected by the Solutions.

- 3.3** User’s Representation and Warranty. Except in the case of a child using the Solutions in connection with their participation in a clinical trial, by using the Solutions, you represent and warrant to us that you are of legal age.

3.4 Children’s Privacy. We are committed to protecting the privacy of children. Except as described in Section 4.2 above, we do not intend to collect any personally identifiable information from children, and we will not collect any personally identifiable information from any person we actually know is under age. Outside of a clinical trial involving patients or enrollees who are children, if a person who is under age accurately discloses that person’s age in the appropriate field in the process of registering as a user of the Solution, that person will not be able to access the Content or upload or disclose any information through the Solution. However, outside of a clinical trial involving patients or enrollees who are children, if a child misrepresents the child’s age, whether deliberately or accidentally, in the user registration process, then the child will be able to interact with the Solutions and upload information as if the child were of legal age. We do not use an automated algorithm to implement or effectuate our policy of not collecting personally identifiable information from children. Therefore, a person’s statement in a post to the Social Support pages or in an e-mail to us that they or another user are under the age of 18 does not necessarily amount to actual knowledge on our part of that person’s or the referenced other user’s age. Please see our Privacy Policy for an explanation of our privacy practices with respect to information uploaded by users.

4. Access to, and Use of, Solutions.

4.1 Backup Your Own Uploaded Content. When the Solutions provide an ability for you to store your own data or content, we recommend you back up your data and content, and continue to back it up regularly. We may create technical limits on your content, such as limits on file size, storage space, processing capability, and other technical limits. If your use of the Solutions exceeds any of these limits, we may suspend your access to the Solutions until you are within the limits associated with your account.

4.2 User-Generated Content. In some cases, we host content generated by you and other users. We do not regularly review or monitor user-posted content. In using the Solutions, you may come across content that offends or upsets you. We provide a mechanism for you to bring certain Content you believe to be unlawful or otherwise improper to our attention. See Section 17 (Certain Complaints Regarding Content). Through that mechanism, you may, if so inclined, report the content to us. We do not promise, however, that we will remove or otherwise address the content you may report. Ultimately, your sole, and most effective, remedy with respect to Content you find offensive or upsetting is to stop viewing the Content. See also Section 9 (Fostering Community and User Conduct) for rules and guidelines for participation in the iTakeControl community and user conduct.

5. Your Access to Content.

5.1 Specific Authorization. All Solution Content is protected by the copyright laws of the United States and, where applicable, of foreign countries. Content made available on the Solutions for download by ordinary means (i.e., without the use of special software tools or by hacking) is referred to as “Downloadable Content.” We authorize you to view and use (and, to the extent the Solutions allows for it, to) download a single copy of the Downloadable Content solely for your personal, noncommercial use if you include the copyright notice located at the end of the material, for example: “©2020, Daylan Digital LLC. All rights reserved” and other copyright and proprietary rights notices contained in the Content. Any special rules for the use of certain software and other items accessible in the Solutions may be included elsewhere within those Solutions and are incorporated into these Terms of Use by reference.

5.2 Other Uses Prohibited. Except for Content posted by our users (“User Content”), the ownership of which is described in Section 7.9 (Ownership of Your User Content), we and our licensors own all right, title, and

interest in and to the Content. These Terms of Use grant to the user only limited and specific authorization to use the Content, including User Content, contained in Section 6.1 (Specific Authorization). Any use of Content not expressly permitted by these Terms of Use is a breach of these Terms of Use and may violate copyright, trademark, and other laws. All rights not expressly granted to users in these Terms of Use are reserved to us and our licensors. If you violate any of these Terms of Use, your permission to use the Content automatically terminates and you must immediately destroy any copies of Content in your possession.

5.3 Change or Termination. Content, features, and functionality of the Solutions are subject to change or termination without notice at any time in our sole discretion.

6. Your Own User Content.

6.1 Privacy Policy Applies to Personal Information; Potential Inconsistencies Between these Terms of Use and our Privacy Policy. The personal information you submit to any of the Solutions is governed by our Privacy Policy. However, these Terms of Use shall prevail and be controlling with respect to inconsistencies, if any, between these Terms of Use and our Privacy Policy.

6.2 Private Content Submissions.

6.2.1 The Solutions contain pages, capabilities, or tools that allow you to upload Content to the Solutions. Certain of these pages, capabilities, and tools are meant for private use by each user ("Private User Areas"). Subject to the terms and conditions of these Terms of Use, Content uploaded to the Private User Areas ("Private User Content") is not shared publicly and remains confidential.

6.2.2 You promise, represent, and warrant to us that you have all rights, permissions, and authorities necessary to lawfully use and submit your Private User Content consistent with these Terms of Use and to grant to us the rights granted to us under these Terms of Use with respect to your Private User Content. We may grant sublicenses hereunder through multiple tiers of sublicenses and sublicensees.

6.3 Information Submitted to Us by E-mail.

6.3.1 Users may submit User Content or other information or communications to us by e-mail, including through the Contact Us link and the other e-mail addresses provided in these Terms of Use for various types of communications (See Section 17 (Certain Complaints Regarding Content), Section 20 (Dispute Resolution), and Section 21 (Notices to Us)).

6.3.2 The Content and other information users submit to us by email, including e-mails containing business information, ideas, concepts, and/or inventions, is subject to, and governed by, these Terms of Use and shall be deemed to be Public User Content. Notations in e-mails or in files attached to e-mails purporting to characterize the information transmitted in or with the e-mails as confidential or proprietary shall be null and void and shall not limit or modify the foregoing provisions of this Section 7.5.2.

6.4 Comments and Feedback.

- 6.4.1** Comments. The Solutions may allow you to comment on Content. Comments are not anonymous and may be viewed by other users. You may not be able to delete your comments. We may delete your comments.
 - 6.4.2** Feedback. The Solutions may give you the opportunity to provide us with ideas, suggestions, or proposals (“Feedback”). Feedback is voluntary, and you have no obligation to submit Feedback.
 - 6.4.3** Public User Content. Comments and Feedback are deemed to be Public User Content, subject to the broad rights granted to us in Section 7.3 (Public Content Submissions).
- 6.5** Image, Video, and Audio Files. The following applies to the study site user only for this clinical trial. If you include media files, such as photos, videos, or audio (“**Media**”) in your User Content, you agree to the following:
 - 6.5.1** You will post or upload only Media that you have created yourself or to which you have all rights to transmit and grant licenses and that does not violate any trademark, copyright, or privacy right or any other right of any other person.
 - 6.5.2** You will not submit any Media that contains personally identifiable information (like name, phone number, email address or web site URL) of you or of anyone else.
 - 6.5.3** Media you upload or share to any Public User Area, or through a Social Media Platform, or by e-mailing it to us, or that a user with whom you shared it as Limited-Shared Content makes public through the Services, will be deemed Public User Content, subject to the broad grant of rights to us described in Section 7.3 (Public Content Submissions) .
 - 6.5.4** You agree you will not post Media containing an image(s) or video or audio recording(s) of or with another person(s) unless you have their explicit permission. Uploading Media containing images or recordings of other person(s) without their permission is strictly prohibited.
- 6.6** Your Representations and Warranties Regarding Your Media Content.
 - 6.6.1** You warrant that you have received permission and all necessary rights from all persons appearing or heard in your Media for you to use their images and/or voice and/or other Content generated by them as you are using them and to share the Media with the Services.
 - 6.6.2** You also warrant that you have received permission and all necessary rights from those persons to grant to us the rights described in these Terms of Use.
 - 6.6.3** Specifically you warrant and certify that any person (including you) pictured, depicted, or heard, or whose Content is included in the Media (or, if a minor, that person’s parent or legal guardian), authorizes us to use, copy, print, display, reproduce, modify, publish, post, transmit, and distribute the Media and any material included in the Media in accordance with the relevant rights granted to us in Section 7.3 Public Content Submission) and Section 7.10 (Additional License Grants) .
 - 6.6.4** You also hereby agree to indemnify us and our affiliates, managers, members, employees, and agents against, and hold us and these persons harmless from, any and all claims, liabilities, damages and costs, including attorneys’ and accountants’ fees, arising from actions and claims

by third parties pertaining to the Media included in your User Content. This indemnification obligation is in addition to, and not in lieu of, any other more general indemnification obligations contained in these Terms of Use.

- 6.6.5** You acknowledge we have the right, but not the obligation, to review all Media uploaded to the Solutions and to remove any Media for any reason, at any time, without prior notice, at our sole discretion. However, we do not have a regular practice of reviewing uploaded Media and there should be no expectation by any user that we will review or take any action with respect to any Media.
- 6.7** Ownership of Your User Content. You retain exclusive ownership of your User Content, including both your Private User Content and your Public User Content, subject to the rights granted to us in Section 7.3 (Public Content Submissions) and Section 7.10 (Certain Other License Grants).
- 6.8** Additional License Grants. The license and rights grants in this Section 7.10 are in addition to the grants of rights with respect to Public User Content contained in Section 7.3 (Public Content Submissions).
 - 6.8.1** User Experience Enhancement; Research and Education. You hereby grant to us a non-exclusive, worldwide, perpetual, irrevocable, royalty-free, sub-licensable, and transferable license to use all your User Content in anonymized and de-identified form and aggregated with that of other users to enhance user experience and for research and education purposes. This license includes our right to use, and to grant to third parties the right to use, your User Content in anonymized and de-identified form, aggregated with the User Content of other users, for various purposes (including, for example, but not limited to, enhancing the understanding and management of a disease, disorder and other conditions).
 - 6.8.2** Operation and Improvement of Solutions. You hereby grant to us a non-exclusive, worldwide, perpetual, irrevocable, royalty-free, sub-licensable, and transferable license to use, reproduce, publicly display, distribute, publicly perform, and translate the content as needed in response to user driven actions (such as when You choose to store privately or share Your content with others). This license is only for the purpose of operating or improving the Solutions.
 - 6.8.3** Preservation of, Access to, and Disclosure of User Information. You acknowledge, consent, and agree that we may preserve the data you provided to us in registering your account ("Registration Data") and any other information you submit through the Solutions, and we may access and disclose it if required to do so by law or in a good faith belief that this access and/or disclosure is reasonably necessary in our judgment to: (a) comply with legal process, including, but not limited to, civil and criminal subpoenas, court orders, or other compulsory disclosures; (b) properly operate the Solutions consistent with applicable law and these Terms of Use; (c) enforce these Terms of Use; (d) respond to claims of a violation of the rights of third parties; (e) respond to customer service inquiries; or (f) protect the rights, property, or personal safety of all our Solutions, our users, or the public.

7. Registration Data, Other Account Information, and Password.

You are responsible for all activity that occurs in and through your account. You agree you will not give your password or other account credentials to anyone for purposes of allowing them to use the Solutions on or for their own behalf. We prohibit you from allowing another person to use the Solutions for their own purposes through your account.

If you elect to entrust another person or persons with your password to gain access to your iTakeControl account on your behalf (but not for their own purposes), you assume all risks associated with doing so. That person or persons will be able to change your account settings and upload information through the Solutions in your name. That person's or those persons' actions through your account will be deemed to be your actions. The digital footprint left by them in cyberspace through your account will be deemed to be your footprint.

You agree to take all necessary reasonable steps to ensure that no unauthorized person shall have access to your iTakeControl password, other account credentials, or account. It is your responsibility and obligation to (a) control the dissemination and use of your sign-in name and password; (b) monitor and control access to, and use of, your password and account; (c) maintain the secrecy of your password and other account credentials, and (d) promptly notify us by e-mail in accordance with Section 21 (Notices to Us).

8. Fostering Community and User Conduct.

- 8.1** General. Our goal is to foster, and we believe our users expect, a courteous, respectful, and professional community experience. The rules contained in this Section 9 are intended to support that goal.
- 8.2** Your Responsibility. You are solely responsible for your own communications through the Solutions and the consequences of those communications. In cases where you feel threatened or believe someone else is in danger, you should contact your local law enforcement agency immediately. If you think you may have a medical emergency, call your doctor or other health care professional emergency services (e.g. 911) immediately.
- 8.3** Rules of Conduct. You agree to not engage in the following activities through your iTakeControl account or otherwise through or in connection with the Solutions:
 - 8.3.1** Using the Solutions for any purpose in violation of local, state, national, or international laws;
 - 8.3.2** Copying, modifying, hosting, streaming, sublicensing, or reselling the Solutions or any portion thereof;
 - 8.3.3** Enabling or allow others to use the Solutions or Content using your account information;
 - 8.3.4** Using the Content or Solutions to create any kind of database;
 - 8.3.5** Accessing or attempting to access the Solutions by any means other than the interface we provide and authorize;
 - 8.3.6** Circumventing any restriction (whether technical or contractual or legal) on access to, or use of, the Solutions we have implemented to prevent certain uses and/or misuses of the Solutions;
 - 8.3.7** Distributing or sharing Content, or engaging in behavior, in violation of anyone's copyright, moral rights, trademark, trade dress, patent, trade secret, right of privacy, right of publicity, likeness rights, and any other proprietary rights (collectively "Intellectual Property Rights");
 - 8.3.8** Uploading or sharing any Content that is unlawful or, as determined by use in our sole and absolute discretion, harmful, threatening, abusive, offensive, tortious, defamatory, vulgar, lewd, profane, obscene, embarrassing to another person, invasive of another's privacy, or hateful;

- 8.3.9** Impersonating any person or entity, or falsely stating or otherwise misrepresenting your affiliation with a person or entity;
 - 8.3.10** Disabling, impairing, damaging, or destroying the Solutions or any portion thereof of attempting to so;
 - 8.3.11** Disrupting, interfering with, or inhibiting any other user from using and enjoying the Solutions (such as stalking, intimidating, or harassing others, inciting others to commit violence, or harming minors in any way);
 - 8.3.12** Creating, transmitting, distributing, or forwarding any chain letter, junk mail, pyramid scheme, spam (which may include posting the same comment or note more than once), or other unsolicited message;
 - 8.3.13** Advertising any product or service in or through the Solutions;
 - 8.3.14** Using any data mining or similar data gathering and extraction methods (e.g., harvesting, scraping, etc.); or
 - 8.3.15** Uploading, transmitting, or distributing any material that contains software viruses, malware, or any other computer code, files, or programs designed to interrupt, destroy, limit the functionality of, or use manipulate in any unauthorized manner, the Solutions or any computer software.
- 8.4** **Actions We may Take.** We shall have the right (but we will not be obligated) to do any or all of the following, as well as other reasonable actions we deem necessary or desirable, in our sole discretion, to support the goal articulated in Section 9.1 (General) or benefit our community of users:
- 8.4.1** Subject to our Privacy Policy, monitor, record, edit, or disclose any communication in the Private User Areas or Public User Areas, including the Social Support pages, or (to the extent we have the authority to do so) on a Social Media Platform;
 - 8.4.2** Investigate allegations that communication(s) do not conform to these Terms of Use;
 - 8.4.3** Terminate a user's access to any or all Public User Areas and/or the overall Solutions in our sole discretion;
 - 8.4.4** Edit or delete any communication(s) posted through the Solutions regardless of whether such communication(s) violate these Terms of Use.

You agree that we shall have no liability or responsibility to you or any person claiming through you or on your behalf for performance or nonperformance of the actions described in Section 9.4.

9. Privacy.

- 9.1** Generally. You should carefully read our full Privacy Policy before registering to use the Solutions, as it governs our treatment of all information submitted or gathered through the Services, including, without limitation, your Registration Data and User content, some of which is personally identifiable information. Certain information you may submit to us might reveal your gender identity, ethnicity, race, nationality,

age, religion, sexual orientation, and/or other personal information about you. We do not require the submission of any of this type of information as a condition to use the Solution. We treat this information as private. You acknowledge your submission of any information, statements, data, and Content to us is voluntary on your part. You are responsible for the information you share through the Solutions. You agree to comply with our Privacy Policy.

- 9.2 Health Information and Privacy.** We are not a “covered entity” within the meaning of the Health Insurance Portability and Accountability Act of 1996, as amended (“HIPAA”), and the Services are not subject to regulation by the U.S. Department of Health and Human Services (“HHS”). Consequently, you should not expect the Services to be compliant with the requirements of HIPAA or the regulations of HHS. If you intend to use the Solutions in conjunction with individually identifiable health information (which would be referred to as protected health information or “PHI” if it were held or transmitted by a covered entity or business associate of a covered entity), you acknowledge and agree that the Solutions would not be HIPAA-compliant, if that term were applicable to us or the Solutions. You are solely responsible for safeguarding your own personal health information and for using the Solutions in a manner consistent with all applicable federal and state privacy laws relating to personally identifiable information, including, but not limited to, personal health information.

10. Mobile Services.

For purposes of these Terms of Use, the term “mobile device” includes smart phones, tablets, portable computers, and other devices that use or rely on mobile communications carriers to transmit data. In using the App on a mobile device, you agree information about your use of the Solutions through your mobile device and mobile communications carrier may be communicated to us, including, but not limited to, the identity of your mobile carrier, your mobile device, and your physical location. Use of the Solutions through a mobile device will cause data to be displayed on and transmitted through your mobile device. You represent and warrant that to the extent you upload, download, import, export, or transmit any Registration Data or User Content via your mobile device, you have authority to share the transferred information with your mobile carrier or other mobile access provider. In the event you change or deactivate your mobile account without porting your mobile device number, you must promptly update your iTakeControl account information to ensure that notifications intended for you are not sent to the person that acquires your old number. You agree that we assume no responsibility or risk in any way related to your failure to update your account information when necessary. You acknowledge you are responsible for all charges and necessary permissions related to accessing the Solutions through your mobile device and carrier/mobile access provider. By installing and/or using the App, you are explicitly confirming your acceptance of these Terms of Use.

11. Your Indemnification of Us.

You agree to indemnify us and our affiliates, managers, members, employees, and agents against, and hold us and these persons harmless from, any and all claims, liabilities, damages and costs, including attorneys' and accountants' fees, arising from or related to:

- 11.1 Third-Party Claims.** All third-party claims, charges, and investigations caused by (a) your failure to comply with these Terms of Use; and
- 11.2 Damages Sustained by Us Irrespective of Third-Party Claims.** Your violation (material or immaterial) of any of your obligations in:
- 11.2.1** Section 8.3.2 (relating to copying, streaming, reselling, etc. the Solutions);

- 11.2.2** Section 8.3.3 (relating to allowing others to use the Solutions through your account);
- 11.2.3** Section 8.3.4 (relating to use of the Solutions to create a database);
- 11.2.4** Section 8.3.5 (relating to accessing the Solutions illicitly);
- 11.2.5** Section 8.3.10 (relating to disabling or damaging the Solutions);
- 11.2.6** Section 8.3.11 (relating to interfering with third parties or their use of the Solutions);
- 11.2.7** Section 8.3.12 (relating to chain letters and spam and the like);
- 11.2.8** Section 8.3.13 (relating to advertising products or services through the Solutions);
- 11.2.9** Section 8.3.14 (relating to data mining and data extraction and the like); and/or
- 11.2.10** Section 8.3.15 (relating to viruses and malware and the like).

12. Disclaimer of Warranties and Our Liability.

- 12.1** User Assumes Risk. The use of the Solutions, and associated Content is at your own risk. The following acknowledgments and disclaimers are not to be construed as limiting the generality of the foregoing sentence.
- 12.2** Third-Party Networks. When using the Solutions, information will be transmitted over a medium that may be beyond our control and that of our suppliers, either technically or as a matter of law. We assume no liability for, or relating to, the delay, failure, interruption, or corruption of any data or other information transmitted in connection with use of the Solutions.
- 12.3** Disclaimer of Warranties.
 - 12.3.1** The Solutions and associated Content are provided on an "as is" basis.
 - 12.3.2** WE AND OUR LICENSORS AND SUPPLIERS, TO THE FULLEST EXTENT PERMITTED BY LAW, DISCLAIM ALL WARRANTIES, BOTH EXPRESS AND IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT OF THIRD PARTIES' RIGHTS, AND FITNESS FOR PARTICULAR PURPOSE.
 - 12.3.3** Without limiting the generality or scope of the foregoing, we make no representations or warranties with regard to: (a) the accuracy, reliability, completeness, currentness, or timeliness of the Solutions or the Content, software, text, graphics, links, or communications provided on or through the use of the Solutions, (b) the satisfaction of any government regulations requiring disclosure of information on prescription drug or device products or the approval or compliance of any software tools included within the Services, or (c) whether our security protocols can be breached by third parties intending to gain unauthorized access to the Solutions, the Content, or user data.
- 12.4** Limitation of Liability.

SOME COUNTRIES DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY IN CONTRACTS WITH CONSUMERS AND AS A RESULT THE CONTENTS OF THIS SECTION MAY NOT APPLY TO YOU.

- 12.4.1** You agree that in no event shall we be liable for any damages (including, without limitation, incidental and consequential damages, personal injury/wrongful death, lost profits, or damages resulting from lost data or business interruption) resulting from the use of, or inability to use, the Solutions or the Content, whether based on warranty, contract, tort, or any other legal theory, and whether or not we are or were advised of the possibility of such damages.
- 12.4.2** We shall be liable only to the extent of actual damages incurred by you, not to exceed one thousand United States dollars (US\$1,000). We shall not be liable for any personal injury, including death, caused by your use or misuse of the Solutions, or Content, or your breach of these Terms of Use.
- 12.4.3** Any claims you may have against us pertaining to these Terms of Use, your use of Solutions, or Content must be brought within one (1) year after the date on which occurred the event giving rise to claim (or if a series of events, the last of them).
- 12.4.4** Remedies under these Terms of Use are exclusive and are limited to those expressly provided for in these Terms of Use.

13. Termination.

- 13.1** Mutual rights of termination. You may terminate these Terms of Use, for any or no reason, at any time, with notice to us in accordance with Section 21 (Notices to Us). We may terminate these Terms of Use for any reason or no reason, at any time, with or without notice to you. Our termination shall be effective immediately or as may be specified in a notice to you, if any. Termination of these Terms of Use will result in termination of your iTakeControl account, which will disable your access to the Solutions.
- 13.2** Misuse of the Solutions. We may restrict, suspend, terminate, and/or refuse to reactivate, the account of any User who abuses or misuses the Solutions. Misuse includes, among other things, registering under more than one identity, using the Solutions commercially without our authorization, infringing any Intellectual Property Rights, use of the Solutions in any manner not consistent with these Terms of Use, or any other behavior that we, in our sole discretion, deem contrary to our mission and purpose.
- 13.3** Effect of Termination. Upon the termination of your iTakeControl account, you lose access to the Solutions. In addition, we may block access to the Solutions from an IP address or range of IP addresses associated with those of terminated users. The terms of these Terms of Use shall survive any termination hereof and termination of your account, except Section 5 (Access to, and Use of, Services) , Section 6.1 (Specific Authorization) , Section 7.2.1 (relating to Private User Areas) , Section 7.3.1 (relating to Public User Areas) , Section 7.4.1 (relating to Public/Private Option Areas) , Section 7.5.1 (relating to submission of information by e-mail) . Section 7.6.1 (Comments), and Section 7.6.2 (Feedback).

14. Consent to Conduct Business Electronically and Notices to You.

- 14.1** Consent to Electronic Communications. We may be required by law, or may elect, to send communications to you pertaining to your iTakeControl account, these Terms of Use, the Solutions, your use of the same, our use of information you may submit to us, or related matters. You agree that we may send communications to you by email and/or may make communications available to you by posting them on, or notifying you through, the Solutions. You consent to receive these communications

electronically. The term communications means any notice, record, agreement, or other type of information that is made available to you or received from you in connection with the Solutions.

- 14.2 Your E-mail Address.** You agree we may send communications to you at the e-mail address you provided as part of your Registration Data ("Your E-mail Address"). Notices we transmit to you at Your E-mail Address will be deemed effectively delivered and received upon our transmission of the communication. Notices we transmit to you by posting on the Solutions will be effective upon their posting. You agree that if your email account or email address changes, you will promptly update your Registration Data (by logging in to your iTakeControl account) to reflect the changes and ensure Your E-mail Address is accurate and valid. You agree that we may rely on Your E-mail Address as reflected in your Registration Data.
- 14.3 Consenting to Do Business Electronically.** The decision whether to do business electronically is yours, and you should consider whether you have the required hardware and software capabilities described below. Your consent to do business electronically and our agreement to do so covers all transactions you conduct through the Services for as long as you remain a user.
- 14.4 Hardware and Software Requirements.** In order to access and retain an electronic record of communications, you will need: (a) for the Solutions (other than the App), a computer, a monitor, a connection to an Internet service provider, Internet browser software that supports 128-bit encryption, and an e-mail address; and (b) for use of the App, a mobile device, a unique mobile number, an account with a mobile carrier, including a data package, and an e-mail address. By downloading and using the App or using the other Services, you are confirming to us that you have the means to access, and to store and download or print communications. We do not provide ISP services. You must have your own Internet service provider. We may update and/or upgrade our technology for security and other purposes from time as newer technologies become available. If we do so, we will also modify these Terms of Use if necessary and provide notice to users about this modification in accordance with these Terms of Use.
- 14.5 Communications Choices.** If you later decide you do not wish to receive certain future communications electronically, please review our Privacy Policy to review your communications choices. Generally, however, we anticipate supporting only electronic communications with our users. Consequently, if you decide you do not wish to receive communications electronically, you must terminate your account and your use of the Solutions.

15. Certain Complaints Regarding Content.

The accuracy of User Content, and its non-infringement of the Intellectual Property Rights of third parties bears directly on the utility, value, and continuous improvement of the Solutions. To promote accuracy and non-infringement, we provide a process for submission of complaints concerning User Content.

- 15.1 Copyright Infringement; Notice and Take Down Procedures; Copyright Agent.** If you believe any materials accessible in or from the Solutions infringe your copyright, you may request removal of those materials from the Solutions (or termination of access to the infringing materials) by contacting our copyright agent (identified below) and providing the following information:
- Identification of the copyrighted work that you believe to be infringed. Please describe the work, and where possible include a copy or the location (e.g., URL) of an authorized version of the work;
 - Identification of the material that you believe to be infringing and its location. Please describe the material, and provide us with its URL or any other pertinent information that will allow us to locate the material;
 - Your name, address, telephone number and (if available) e-mail address;

- A statement that you have a good faith belief that the complained of use of the materials is not authorized by the copyright owner, its agent, or the law;
- A statement that the information you have supplied is accurate, and indicating that "under penalty of perjury," you are the copyright owner or are authorized to act on the copyright owner's behalf; and
- Your signature or the electronic equivalent and a signature or the electronic equivalent from the copyright holder or authorized representative.

Our agent for copyright issues relating to the Solutions is as follows:

Riverside Law LLP
 c/o Daylan Digital LLC
 Attention: iTakeControlHealth.com
 Glenhardie Corporate Center, Suite 202
 1285 Drummers Lane
 Wayne, PA 19087
 P: 215-268-3888
 legal@iTakeControlHealth.com

15.2 Non-copyright Complaints Regarding Content Posted on the Solutions. If you in good faith believe User Content infringes any other intellectual property rights or is inaccurate or unlawful, you may request review and/or removal of that User Content from the Solutions (or termination of access to that User Content through the Solutions) by contacting our copyright agent (identified above) via email or mail and providing the following information:

- Identification of the allegedly infringing, inaccurate or unlawful material and its location (please describe the material and provide us with its URL and other relevant information allowing us to locate it);
- Your name, address, telephone number and e-mail address;
- A statement of your good faith belief explaining alleged infringement, inaccuracy or unlawfulness;
- A statement that the information you have supplied is accurate and indicating that your statement is "under penalty of perjury;" and
- Your signature or the electronic equivalent and a signature or the electronic equivalent from the holder of the relevant legal rights, if applicable, or authorized representative.

16. U.S. Government.

The Solutions constitute a "commercial item," as that term is defined at 48 C.F.R. 2.101, consisting of "commercial computer software" and "commercial computer software documentation." All U.S. government users access the Solutions with only those rights set forth herein.

17. Pennsylvania Law Governs these Terms of Use.

These Terms of Use and their interpretation and enforcement shall be governed by the internal law of the Commonwealth of Pennsylvania, USA, without reference to that jurisdiction's conflicts of law principles or the United Nations Convention for the International Sale of Goods, regardless of your country of origin or residence or where you access the Services.

18. Dispute Resolution.

18.1 Informal Process. If you have a concern or a dispute with us pertaining to the Services or these Terms of

Use, you agree that before initiating formal proceedings, you will make good faith, commercially reasonable efforts to resolve the concern or dispute with us informally by contacting our user experience officer at:

iTakeControlHealth.com
c/o Daylan Digital LLC
Attention: Legal
516 East 2nd Street
PO Box 44
Boston, MA 02127
USA
legal@iTakeControlHealth.com

We will likewise make good faith, commercially reasonable efforts to resolve your bona fide concern or dispute with you informally to your and our mutual satisfaction. This Section 20.1 does not obligate you and us to resolve the concern or dispute informally, only to attempt to do so (assuming the dispute or concern is bona fide) so using good faith, commercially reasonable efforts.

18.2 Agreement to Arbitrate.

- 18.2.1** Arbitration is the Exclusive Formal Dispute Resolution Process. Except for the exclusions expressly and specifically described in Section 20.3, any disputes between you and us arising under these Terms of Use (“Disputes”) shall be resolved by final and binding arbitration, initiated at either party’s request, under the commercial arbitration rules of the American Arbitration Association (“AAA”), to be held in Philadelphia, Pennsylvania, in English, with a written decision and legal reasoning issued by the arbitrator(s). **BY AGREEING TO THESE TERMS OF USE, WHICH AGREEMENT YOU CONFIRM BY USING THE SERVICES, YOU IRREVOCABLY WAIVE YOUR RIGHT TO SUE US IN COURT, EXCEPT AS EXPRESSLY AND SPECIFICALLY DESCRIBED IN SECTION 20.3. FOR THE AVOIDANCE OF DOUBT, THIS WAIVER WILL SURVIVE TERMINATION OF THESE TERMS OF USE AND TERMINATION OF YOUR ITAKECONTROL ACCOUNT.**
- 18.2.2** Arbitration Notices. You or we shall initiate an arbitration proceeding in the manner specified under the AAA’s commercial arbitration rules. You agree you will send your notice of arbitration to us, and that notices to us pertaining to any arbitration shall not be effective unless given to us, in accordance with Section 21 (Notices to Us). Notices to you pertaining to arbitration shall be effective is given to you in accordance with Section 16 (Consent to Conduct Business Electronically and Notices to You).
- 18.2.3** Non-Prevailing Party Pays. The arbitration costs and reasonable documented attorneys’ costs of both parties shall be borne by the party that ultimately loses the arbitration. In the absence of one party prevailing substantially on all arbitrated issues, then absent a specific award by the arbitration panel, the parties shall bear the arbitration costs equally and shall bear their own respective attorneys’ costs.
- 18.2.4** Refundable Fee Advances for Consumers. If you are involved in a Dispute with us as a consumer without any commercial interests related to the Dispute, we will agree to conduct arbitration proceedings in a major city in your state if travel to Philadelphia, Pennsylvania would constitute an undue burden for you, and we will advance any arbitration fees that exceed what you would have had to pay for court proceedings (if you quantify and substantiate to our reasonable

satisfaction the cost of the court proceedings in a written representation to us), provided that you shall refund such amounts if we ultimately prevail in the arbitration.

- 18.3 Exception from Arbitration Agreement.** Notwithstanding Section 20.2, either party may initiate proceedings in any court of competent jurisdiction strictly for the following purposes and under the following circumstances, which proceedings shall not be deemed to be Disputes within the meaning of Section 22.2: (a) to obtain injunctive relief (preliminary or permanent) to prevent violation of these Terms of Use; (b) to compel arbitration; (c) to enforce final arbitration awards; and (d) to adjudicate disputes pertaining principally to the validity, ownership, possession, infringement, or enforcement of Intellectual Property Rights. The parties shall not, through petitions, pleadings, motions, counter-claims, impleading other parties, or other procedural shenanigans, expand any of the foregoing exceptional court proceedings to include issues that must be resolved pursuant to Section 20.2 (Agreement to Arbitrate).
- 18.4 No Class Actions.** You may only resolve disputes with us on an individual basis, and may not bring a claim as a plaintiff or a class member in a class, consolidated, or representative action. **BY AGREEING TO THESE TERMS OF USE, WHICH AGREEMENT YOU CONFIRM BY USING THE SERVICES, YOU IRREVOCABLY WAIVE YOUR RIGHT TO INITIATE OR PARTICIPATE IN ANY CLASS, CONSOLIDATED, OR REPRESENTATIVE ACTION AGAINST US. FOR THE AVOIDANCE OF DOUBT, THIS WAIVER WILL SURVIVE TERMINATION OF THESE TERMS OF USE AND TERMINATION OF YOUR ITAKECONTROL ACCOUNT.**

19. Notices to Us.

- 19.1 The Contact Us Links.** If you communicate with us by e-mail through the Contact Us links provided in the Solutions, we will endeavor to respond. However, the Contact Us links are provided for casual communications. You agree we are not legally obligated to respond in any particular time frame or at all to e-mail communications we receive via the Contact Us links. E-mail communications to us through the Contact Us links will have no legal force or effect. In terms of legal impact or consequence, e-mail communications to us through the Contact Us links do not exist.
- 19.2 Limited Purpose Notices.** Section 17 (Certain Complaints Regarding Content) and Section 20 (Dispute Resolution) contain the e-mail and snail mail addresses to which certain notices should be sent to us for the purposes described in those sections.
- 19.3 Formal Notices.** You may notify us of any matter of which you would like us to be cognizant for legal or business purposes by email at:

legal@iTakeControlHealth.com

You may also send the notice to us via US mail (which, if you are not a US resident, includes the official government postal service of the country from which you are sending the notice) or courier at:

iTakeControlHealth.com
c/o Daylan Digital LLC
Attention: Legal
516 East 2nd Street
PO Box 44
Boston, MA 02127
USA

A notice sent to us at this e-mail address will be deemed effective when our authorized representative opens the e-mail or five (5) business days after the e-mail is delivered to our inbox, whichever is first. A notice sent to us by US mail at this address will be deemed effective five (5) business days after posting if sent from the US and ten (10) business days after posting if sent from a different country, in either case if sent by certified mail, return receipt requested, and postage prepaid. A notice originating from the US and sent to us by a reputable, national courier will be deemed effective two (2) business days after being deposited with the courier if sent by overnight, next-day delivery, and seven (7) business days after being deposited with the courier if sent by ground. A notice originating from a different country and sent to us by a reputable, international courier will be deemed effective five (5) business days after being deposited with the courier if sent by air for next-business-day delivery, courier charges pre-paid, and receipt confirmed by the courier.

20. General and Miscellaneous Provisions.

- 20.1 Entire Agreement.** These Terms of Use, together with our Privacy Policy, as amended, constitute the entire, complete, and exclusive agreement between you and us regarding the subject matter of these Terms of Use and supersedes all prior agreements and understandings, whether written or oral, and any course of dealing or practice. You also may be subject to additional terms and conditions that may apply when you use any of the Solutions.
- 20.2 Severability.** If any provision of these Terms of Use is found by a court of competent jurisdiction or arbitrator to be illegal, void, or unenforceable, the unenforceable provision will be modified so as to render it enforceable and effective to the maximum extent possible in order to effect as closely as possible the intention of the provision; and if a court or arbitrator finds the modified provision invalid, illegal, void or unenforceable, the validity, legality and enforceability of the remaining provisions of these Terms of Use will not be affected in any way.
- 20.3 Language.** If we provide you with a translation of the English language version of these Terms of Use (which we are not obligated to do), including the Privacy Policy, and/or any other documentation, you agree that the translation is provided for your convenience only and that the English language versions of these Terms of Use, including the Privacy Policy, will govern your relationship with us.
- 20.4 Amendments to these Terms of Use.** We have the right to modify, supplement, or replace these Terms of Use, effective upon posting on the Solutions and on the “About” page in the App. You are responsible for reviewing the updated/modified Terms of Use from time to time. Your use of the Services after any update or modification shall confirm your agreement to the same. If you do not want to agree to changes to the Terms of Use, you can terminate the Terms of Use at any time in accordance with Section 15 (Termination). Only modifications, supplements, or replacements of these Terms of Use officially posted by us on the Solutions or sent by us to you pursuant to the notice provisions in Section 16 (Consent to Conduct Business Electronically and Notices to You) shall be valid and effective to amend these Terms of Use. Any other purported amendments shall be void and of no force or effect.
- 20.5 No informal waivers, agreements or representations.** Our failure to act with respect to a breach of these Terms of Use by you or others does not waive our right to act with respect to that breach or subsequent similar or other breaches. Except as expressly and specifically contemplated by these Terms of Use, no representations, statements, consents, waivers, or other acts or omissions by us shall be deemed legally binding on us, unless documented in physical writing hand signed by a duly appointed officer.
- 20.6 No Injunctive Relief.** In no event shall you seek, or be entitled to, rescission, injunctive, or other equitable relief with respect to, or to enjoin or restrain, the operation of the Services, App, Website, or Platform, exploitation of any advertising or other materials issued in connection therewith, or exploitation of the

Services or any Content or other material used or displayed through the Services.

- 20.7** Assignment and Delegation. You may not assign or delegate any rights or obligations under these Terms of Use. Any purported assignment or delegation shall be ineffective. We may freely assign or delegate all rights and obligations under the Agreement, fully or partially without notice to you. We may also substitute, by way of unilateral novation, effective upon notice to you, for Daylan Digital LLC any third party that assumes our rights and obligations under these Terms of Use.

Daylan Digital LLC, Boston, Massachusetts, USA, October 27, 2020