

Swift Medical third party pass through terms:

These Terms and the documents that are referred to herein constitute a binding obligation between you and Swift Medical. To make these Swift Medical Terms of Service (“Terms”) easier to read, the Site, our services (including but not limited to any clinical decision support tools, software tools and order sets developed by Swift, third party providers, or their licensors) and the App are collectively called the “Services.”

1. **Agreement to Terms.** By using our Services, you agree to be bound by these Terms. If you don’t agree to be bound by these Terms, do not use the Services.
2. **Changes to Terms or Services.** We’ll notify you of any changes to the Terms or Services by posting them on the Services or by sending you an email or other notification, and we’ll notify you when those changes will become effective. It’s important that you review the Terms whenever we update them or you use the Services. If you continue to use the Services after we have posted updated Terms, you are agreeing to be bound by the updated Terms. If you don’t agree to be bound by the updated Terms, then you may not use the Services anymore. Because our Services are evolving over time we may change or discontinue all or any part of the Services, at any time and without notice, at our sole discretion.
3. **Who May Use the Services?**
 - a. Eligibility. You may use the Services only if you are 18 years or older, and are not barred from using the Services under applicable law. In some cases, portions of the Services, such as use of the App or any dashboard, may only be accessed through an affiliation with your employer or the entity that holds the license for your use of the Services, and may require that you be a licensed clinician capable of rendering medical advice or interpreting information obtained from the App to effectuate patient care.
 - b. Registration and Your Information. If you want to use certain features of the Services you’ll have to create an account (“Account”).
 - c. Accuracy of Account Information. It’s important that you provide us with accurate, complete and up-to-date information for your Account and you agree to update such information to keep it accurate, complete and up-to-date. If you don’t, we might have to suspend or terminate your Account. You agree that you won’t disclose your Account password to anyone and will maintain the security of your Account and you’ll notify us immediately of any unauthorized use of your Account. You’re responsible for all activities that occur under your Account, whether or not you know about them.

4. **The Swift Medical Services and Disclaimer on Usage.** The Services may allow clinicians, among other things, to capture, store and manage certain information about a patient's wound. Please note that such information is considered Protected Health Information under HIPAA (as defined in our privacy policy), and that applicable law and the entity governing your access to the Services may have additional restrictions on the use and disclosure of such information. The Services are not intended to provide or be the basis for any treatment recommendations for individual patients or groups of patients; and that you shall apply reasonable clinical judgement when using the Services; and do not rely exclusively on the Services and any results or outputs from such Services when applying such reasonable clinical judgement.
5. **Feedback.** We welcome feedback, comments and suggestions for improvements to the Services ("**Feedback**"). You grant to us a non-exclusive, transferable, worldwide, perpetual, irrevocable, fully-paid, royalty-free license, with the right to sublicense, under any and all intellectual property rights that you own or control to use, copy, modify, create derivative works based upon and otherwise exploit the Feedback for any purpose.
6. **Content Ownership, Responsibility and Removal**
 - a. Definitions. For purposes of these Terms: (i) "**Content**" means text, graphics, images, music, software, audio, video, works of authorship of any kind, and information or other materials that are posted, generated, provided or otherwise made available through the Services; and (ii) "**User Content**" means any Content that Account holders (including you) provide to be made available through the Services. Content includes without limitation User Content.
 - b. Our Content Ownership. Swift Medical does not claim any ownership rights in any User Content and nothing in these Terms will be deemed to restrict any rights that you may have to use and exploit your User Content. Subject to the foregoing, Swift Medical and its licensors exclusively own all right, title and interest in and to the Services and Content, including all associated intellectual property rights. You acknowledge that the Services and Content are protected by copyright, trademark, and other laws of the United States and foreign countries. You agree not to remove, alter or obscure any copyright, trademark, service mark or other proprietary rights notices incorporated in or accompanying the Services or Content.
 - c. Rights in User Content Granted by You. By making any User Content available through the Services you hereby grant to Swift Medical a non-exclusive, transferable, worldwide, royalty-free license, with the right to sublicense, to use, copy, modify, distribute, publicly display, publicly perform, distribute, and if applicable, create derivative works based upon your User Content in connection with operating and providing the Services and Content to you and to other Account holders.

- d. **Your Responsibility for User Content.** You are solely responsible for all your User Content. You represent and warrant that you own all your User Content or you have all rights that are necessary to grant us the license rights in your User Content under these Terms. You also represent and warrant that neither your User Content, nor your use and provision of your User Content to be made available through the Services, nor any use of your User Content by Swift Medical on or through the Services will infringe, misappropriate or violate a third party's intellectual property rights, or rights of publicity or privacy, or result in the violation of any applicable law or regulation.
- e. **Removal of User Content.** You can remove certain portions of your User Content by specifically deleting it. However, in certain instances, some of your User Content (such as posts or comments you make) may not be completely removed and copies of your User Content may continue to exist on the Services. We are not responsible or liable for the removal or deletion of (or the failure to remove or delete) any of your User Content.
- f. **Rights in Content Granted by Swift Medical.** Subject to your compliance with these Terms, Swift Medical grants to you a limited, non-exclusive, non-transferable license, with no right to sublicense, to download, view, copy, display and print the Content solely in connection with your permitted use of the Services.

7. Rights and Terms for Apps.

- a. **Rights in App Granted by Swift Medical.** Subject to your compliance with these Terms, Swift Medical grants to you a limited non-exclusive, non-transferable license, with no right to sublicense, to download and install a copy of the App on a mobile device or computer that you own or control and to run such copy of the App (i) if accessing the App or Services through your affiliation with an organization that maintains commercial contacts with Swift Medical, on behalf of and only for the internal purposes of that organization; or (ii) if for your personal use, on your own behalf and only for your own personal use. You may not copy the App, except for making a reasonable number of copies for backup or archival purposes. Except as expressly permitted in these Terms, you may not: (i) copy, modify or create derivative works based on the App; (ii) distribute, transfer, sublicense, lease, lend or rent the App to any third party; (iii) reverse engineer, decompile or disassemble the App; or (iv) make the functionality of the App available to multiple users through any means. Swift Medical reserves all rights in and to the App not expressly granted to you under these Terms.
- b. **Accessing App from App Store.** The following terms apply to any App accessed through or downloaded from any app store or distribution platform (like the Apple App Store or Google Play) where the App may now or in the future be made available (each an "**App Provider**"). You acknowledge and agree that:
- These Terms are concluded between you and Swift Medical, and not with the App Provider, and Swift Medical (not the App Provider), is solely responsible for the App.
 - The App Provider has no obligation to furnish any maintenance and support services with respect to the App.

- In the event of any failure of the App to conform to any applicable warranty, you may notify the App Provider, and the App Provider will refund the purchase price for the App to you (if applicable) and, to the maximum extent permitted by applicable law, the App Provider will have no other warranty obligation whatsoever with respect to the App. Any other claims, losses, liabilities, damages, costs or expenses attributable to any failure to conform to any warranty will be the sole responsibility of Swift Medical.
- The App Provider is not responsible for addressing any claims you have or any claims of any third party relating to the App or your possession and use of the App, including, but not limited to: (i) product liability claims; (ii) any claim that the App fails to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection or similar legislation.
- In the event of any third party claim that the App or your possession and use of that App infringes that third party's intellectual property rights, Swift Medical will be solely responsible for the investigation, defense, settlement and discharge of any such intellectual property infringement claim to the extent required by these Terms.
- The App Provider, and its subsidiaries, are third-party beneficiaries of these Terms as related to your license to the App, and that, upon your acceptance of the Terms, the App Provider will have the right (and will be deemed to have accepted the right) to enforce these Terms as related to your license of the App against you as a third-party beneficiary thereof.
- You represent and warrant that (i) you are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a terrorist-supporting country; and (ii) you are not listed on any U.S. Government list of prohibited or restricted parties.
- You must also comply with all applicable Netsmart terms of service when using the App.

8. General Prohibitions and Swift Medical's Enforcement Rights. You agree not to do any of the following:

- a. Post, upload, publish, submit or transmit any Content that: (i) infringes, misappropriates or violates a third party's patent, copyright, trademark, trade secret, moral rights or other intellectual property rights, or rights of publicity or privacy; (ii) violates, or encourages any conduct that would violate, any applicable law or regulation or would give rise to civil liability; (iii) is fraudulent, false, misleading or deceptive; (iv) is defamatory, obscene, pornographic, vulgar or offensive; (v) promotes discrimination, bigotry, racism, hatred, harassment or harm against any individual or group; (vi) is violent or threatening or promotes violence or actions that are threatening to any person or entity; or (vii) promotes illegal or harmful activities or substances;
- b. Use, display, mirror or frame the Services or any individual element within the Services, Swift Medical's name, any Swift Medical trademark, logo or other proprietary information, or the layout and design of any page or form contained on a page, without Swift Medical's express written consent;
- c. Access, tamper with, or use non-public areas of the Services, Swift Medical's computer systems, or the technical delivery systems of Swift Medical's providers;
- d. Attempt to probe, scan or test the vulnerability of any Swift Medical system or network or breach any security or authentication measures;
- e. Avoid, bypass, remove, deactivate, impair, descramble or otherwise circumvent any technological measure implemented by Swift Medical or any of Swift Medical's providers or any other third party (including another user) to protect the Services or Content;
- f. Attempt to access or search the Services or Content or download Content from the Services through the use of any engine, software, tool, agent, device or mechanism (including spiders, robots, crawlers, data mining tools or the like) other than the software and/or search agents provided by Swift Medical or other generally available third-party web browsers;
- g. Send any unsolicited or unauthorized advertising, promotional materials, email, junk mail, spam, chain letters or other form of solicitation;

- h. Use any meta tags or other hidden text or metadata utilizing a Swift Medical trademark, logo URL or product name without Swift Medical's express written consent;
- i. Forge any TCP/IP packet header or any part of the header information in any email or newsgroup posting, or in any way use the Services or Content to send altered, deceptive or false source-identifying information;
- j. Attempt to decipher, decompile, disassemble or reverse engineer any of the software used to provide the Services or Content;
- k. Interfere with, or attempt to interfere with, the access of any user, host or network, including, without limitation, sending a virus, overloading, flooding, spamming, or mail-bombing the Services;
- l. Collect or store any personally identifiable information from the Services from other users of the Services without their express permission or as otherwise allowed under applicable law;
- m. Impersonate or misrepresent your affiliation with any person or entity;
- n. Violate any applicable law or regulation; or
- o. Encourage or enable any other individual to do any of the foregoing.

Although we're not obligated to monitor access to or use of the Services or Content or to review or edit any Content, we have the right to do so for the purpose of operating the Services, to ensure compliance with these Terms and to comply with applicable law or other legal requirements. We reserve the right, but are not obligated, to remove or disable access to any Content, at any time and without notice, including, but not limited to, if we, at our sole discretion, consider any Content to be objectionable or in violation of these Terms. We have the right to investigate violations of these Terms or conduct that affects the Services. We may also consult and cooperate with law enforcement authorities to prosecute users who violate the law.

- 9. **DMCA/Copyright Policy.** Swift Medical respects copyright law and expects its users to do the same. It is Swift Medical's policy to terminate in appropriate circumstances Account holders who repeatedly infringe or are believed to be repeatedly infringing the rights of copyright holders.
- 10. **Links to Third Party Websites or Resources.** The Services (including the App) may contain links to third-party websites or resources. We provide these links only as a convenience and are not responsible for the content, products or services on or available from those websites or resources or links displayed on such websites. You acknowledge sole responsibility for and assume all risk arising from, your use of any third-party websites or resources.
- 11. **Termination.** We may terminate your access to and use of the Services, at our sole discretion, at any time and without notice to you. You may cancel your Account at any time by following the instructions noted in the Services. Upon any termination, discontinuation or cancellation of the Services or your Account, the following Sections will survive: 6, 7(c), 13, 14, 15, 16 and 17.

12. **Warranty Disclaimers.** THE SERVICES AND CONTENT ARE PROVIDED “AS IS,” WITHOUT WARRANTY OF ANY KIND. WITHOUT LIMITING THE FOREGOING, WE EXPLICITLY DISCLAIM ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUIET ENJOYMENT AND NON-INFRINGEMENT, AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE. We make no warranty that the Services will meet your requirements or be available on an uninterrupted, secure, or error-free basis. We make no warranty regarding the quality, accuracy, timeliness, truthfulness, completeness or reliability of any Content. Use of the Services may require internet and data access for which you shall be solely responsible (including any costs and fees) and may be subject to your internet access provider terms and conditions of use.

13. **Indemnity.** To the extent permitted by law, You will indemnify and hold harmless Swift Medical and its officers, directors, employees and agents, from and against any third party claims, disputes, demands, liabilities, damages, losses, and costs and expenses, including, without limitation, reasonable legal and accounting fees arising out of or in any way connected with (i) your negligence, willful misconduct or misuse of the Services or Content, (ii) your User Content, or (ii) your violation of these Terms.

14. **Limitation of Liability**

- a. NEITHER SWIFT MEDICAL NOR ANY OTHER PARTY INVOLVED IN CREATING, PRODUCING, OR DELIVERING THE SERVICES OR CONTENT WILL BE LIABLE FOR ANY INCIDENTAL, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, OR DAMAGES FOR LOST PROFITS, LOST REVENUES, LOST SAVINGS, LOST BUSINESS OPPORTUNITY, LOSS OF DATA OR GOODWILL, SERVICE INTERRUPTION, COMPUTER DAMAGE OR SYSTEM FAILURE OR THE COST OF SUBSTITUTE SERVICES OF ANY KIND ARISING OUT OF OR IN CONNECTION WITH THESE TERMS OR FROM THE USE OF OR INABILITY TO USE THE SERVICES OR CONTENT, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR ANY OTHER LEGAL THEORY, AND WHETHER OR NOT SWIFT MEDICAL OR ANY OTHER PARTY HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGE, EVEN IF A LIMITED REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, SO THE ABOVE LIMITATION MAY NOT APPLY TO YOU.
- b. IN NO EVENT WILL EITHER PARTY’S TOTAL LIABILITY ARISING OUT OF OR IN CONNECTION WITH THESE TERMS OR FROM THE USE OF OR INABILITY TO USE THE SERVICES OR CONTENT EXCEED THE AMOUNTS YOU HAVE PAID FOR USE OF THE SERVICES OR CONTENT OR ONE HUNDRED U.S. DOLLARS (\$100 USD) IF YOU HAVE NOT HAD ANY PAYMENT OBLIGATIONS FOR USE OF THE SERVICES OR CONTENT, AS APPLICABLE.
- c. THE EXCLUSIONS AND LIMITATIONS OF DAMAGES SET FORTH ABOVE ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN SWIFT MEDICAL AND YOU.

15. **Governing Law.** These terms shall be governed by and construed in accordance with the laws of the state of Delaware, without giving effect to its conflict of law provisions. You agree that you will bring any claim or cause of action arising out of your use of the Software or the various services in the courts located within the state of Delaware, and you also agree to submit to the personal and non-exclusive jurisdiction of those courts.

16. **General Terms.**

- a. Entire Agreement. These Terms constitute the entire and exclusive understanding and agreement between Swift Medical and you regarding the Services and Content, and these Terms supersede and replace any and all prior oral or written understandings or agreements between Swift Medical and you regarding the Services and Content, unless otherwise contractually agreed upon by Swift Medical and the organization through which you may be accessing the Services. If any provision of these Terms is held invalid or unenforceable by a court of competent jurisdiction, that provision will be enforced to the maximum extent permissible and the other provisions of these Terms will remain in full force and effect. You may not assign or transfer these Terms, by operation of law or otherwise, without Swift Medical's prior written consent. Any attempt by you to assign or transfer these Terms, without such consent, will be null. Swift Medical may freely assign or transfer these Terms without restriction. Subject to the foregoing, these Terms will bind and inure to the benefit of the parties, their successors and permitted assigns. The parties have expressly required that these terms and all other related documents be drawn up in the English language. Les parties ont expressément exigé que ces conditions d'utilisation et tous les documents qui s'y rapportent soient rédigés en anglais.
- b. Notices. Any notices or other communications provided by Swift Medical under these Terms, including those regarding modifications to these Terms, will be given: (i) via email; or (ii) by posting to the Services. For notices made by e-mail, the date of receipt will be deemed the date on which such notice is transmitted.
- c. Waiver of Rights. Swift Medical's failure to enforce any right or provision of these Terms will not be considered a waiver of such right or provision. The waiver of any such right or provision will be effective only if in writing and signed by a duly authorized representative of Swift Medical. Except as expressly set forth in these Terms, the exercise by either party of any of its remedies under these Terms will be without prejudice to its other remedies under these Terms or otherwise.

Version: April 2020