

TERMS OF SERVICE

Posted: Dec 19, 2022

Effective Date: Dec 19, 2022

You can see our previous terms [here](#).

These terms of service ("**Terms**") govern your use and access to our services, client software and websites ("**Services**"). Your agreement is with Dimagi, Inc., a benefit corporation organized under the laws of The Commonwealth of Massachusetts, and its affiliated entities, including Dimagi Software Innovations Pvt. Ltd., Dimagi South Africa (PTY) LTD.

- If you are using our Services on behalf of a third party, you hereby agree to these Terms on such third party's behalf, and you hereby confirm that you have authority to bind such third party by such agreement.

IF YOU DO NOT AGREE TO BE BOUND TO THESE TERMS AND THE OTHER POLICIES, AGREEMENTS AND DOCUMENTS REFERENCED HEREIN, YOU SHOULD NOT USE OUR SERVICES.

Your Data

Our [Privacy Policy](#) explains the data we collect from you and use in providing and improving the Services. These Terms provide us with certain rights to Your Data as described herein. As used herein, "Your Data" means Stored Data, Account Data, and messages, comments, structured data, photos, and other content submitted to or otherwise generated via the Services by Customer or End Users.

Your Account

To use our Services you will need to create an account with Dimagi ("Your Account"). You acknowledge and agree that you are responsible for all activity occurring under Your Account. Should you choose to authorize, delegate or otherwise share control or access of Your Account with other individuals or organizations ("Your Delegates"), you assume full responsibility for the activity of Your Delegates. Your Delegates includes both web and mobile users of the Services. Dimagi is not responsible for, and assumes no liability resulting from, any use of Your Account or the Services, either by you or by Your Delegates.

Your Responsibilities

You are solely responsible and liable for your conduct and Your Data, which must comply with our [Acceptable Use Policy](#). Please do not collect, copy, upload, download or share Your Data with Dimagi unless you have the right and authority to do so; any such unauthorized sharing of Your Data with Dimagi will be considered a violation of these Terms and may result in the termination of Your Account and any subscriptions for Services then in effect. We may review your conduct and Your Data for compliance with these Terms, but we have no obligation to do so.

You may use our Services only as permitted by applicable law, including export control laws and regulations.

Finally, by using our services, you represent to us that you and Your Delegates comply with the requirements of digital consent as per applicable law, as specified in the Privacy Policy. If you and Your Delegates do not meet these requirements, you may not use the Services.

Software

Some of our Services allow you to download client software programs and tools ("Software") which may update automatically. So long as you comply with these Terms, we give you a limited, nonexclusive, nontransferable, revocable license to use the Software solely to access the Services. To the extent any component of the Software may be offered under an open source license, we will make the terms of that license available to you and the provisions of that license may expressly override some of these Terms. You hereby agree not to reverse engineer, decode or decompile the Services, attempt to do so, or assist anyone in doing so.

The Exchange

The Exchange is our digital distribution platform for users to publish and download mobile or other applications created by third parties. Through the use of our Services, you may access and download applications developed by third parties that have been published on the Exchange. Such applications are subject to separate license and end user agreements, the terms of which are separate and distinct from these Terms. You should review any applicable terms or agreements prior to use of any such applications. You acknowledge and agree that Dimagi is not responsible for, and assumes no liability resulting from, your use (or misuse) of any third party applications accessed via the Exchange or which otherwise are not directly provided by Dimagi as part of the Services.

Access and Updates to Services

Dimagi employs industry best practices to ensure that Services are available with a high degree of reliability, absent scheduled and emergency maintenance periods. From time to time, Dimagi may, in its sole discretion, add features or functions or provide bug fixes, patches, updates and upgrades to our Services, including its components, which may be provided automatically and without advance notice. If you do not want to receive such upgrades automatically, you may not use the Services.

We sometimes release products and features that we are still testing and evaluating. Those Services have been marked "beta," "preview," "early access," or "evaluation" (or with words or phrases with similar meanings) (collectively, "Beta Services"), and may not be as reliable as Dimagi's other services, so please keep that in mind. Any Beta Services are not subject to any warranties or service level/uptime/downtime commitments that Dimagi may provide to you from time to time in connection with the Services.

Communication

If you elected to provide us your personal information to use our Services, to know about our Services, to download content, to contact us or for any other reason, you agree to subscribing to newsletters, marketing or promotional materials and other information we may send. However, you may opt out of receiving any, or all, of these communications from us by following the unsubscribe link or instructions provided in any email we send.

No Medical Advice

Neither Dimagi nor any of its Affiliates is responsible for the provision of medical advice or other health care services to you, and you understand that Dimagi's employees and affiliates are not licensed medical professionals. You acknowledge and agree that the information generated and/or made accessible via the Services is for informational purposes only. The Services should not be used as a substitute for medical advice or treatment provided by a licensed professional. Dimagi is not responsible for, and assumes no liability resulting from, any use of the Services contrary to this provision.

Copyright

The Services are protected by copyright, trademark, and other United States and foreign laws. These Terms in no way grant you any right, title or interest in the Services, other users' content or data, or Dimagi's trademarks, logos and other brand features.

Dimagi respects the intellectual property rights of others and expects its customers and users to do the same. In accordance with the Online Copyright Infringement Liability Limitation Act of the Digital Millennium Copyright Act (17 U.S.C. § 512) ("DMCA"), Dimagi will respond expeditiously to claims of copyright infringement committed using the Services that comply with applicable law. If you believe any materials accessible on or from any of the Services (including our website) infringe your copyright, you may request removal of those materials (or access to them) from the Services by submitting written notification to our copyright agent designated below. In accordance with the DMCA, the written notice (the "DMCA Notice") must include substantially the following:

- Your physical or electronic signature.
- Identification of the copyrighted work you believe to have been infringed or, if the claim involves multiple works on the Services, a representative list of such works.
- Adequate information by which we can contact you (including your name, postal address, telephone number, and, if available, email address).
- A statement that you have a good faith belief that use of the copyrighted material is not authorized by the copyright owner, its agent, or the law.
- A statement that the information in the written notice is accurate.

- A statement, under penalty of perjury, that you are authorized to act on behalf of the copyright owner.

Our designated copyright agent to receive DMCA Notices is:

Director of Corporate Operations

Dimagi, Inc.

585 Massachusetts Ave.

Suite 3

Cambridge, MA 02139-4075

+1 6176492214

Corporate-ops@dimagi.com

If you fail to comply with all of the requirements of Section 512(c)(3) of the DMCA, your DMCA Notice may not be effective. Please be aware that if you knowingly materially misrepresent that material or activity on the Services is infringing your copyright, you may be held liable for damages (including costs and attorneys' fees) under Section 512(f) of the DMCA.

Billing

Subscription Plan: Our Services come in several Subscription plans ("Plans"). The cost and details of your Plans can be found on our Pricing Page.

Subscription Term: You access our Services on a periodic subscription basis, called Subscription Term.

Recurring Billing: By starting your Subscription Term, you authorize us to charge you a periodic plan fee at the then-current rate, and any other charges you may incur in connection with your use of the Services.

Price Changes: We reserve the right to adjust pricing for our Plans or any components thereof in any manner and at any time as we may determine in our sole discretion. Except as otherwise expressly provided for in this agreement, any price changes to your Plans will take effect following an e-mail or in-product notice to you.

For Monthly Billing:

- **Billing Cycle:** The periodic plan fee for our Services will be billed each calendar month unless and until you cancel your Plan. We reserve the right to change the timing of our billing, in particular, if your payment has not successfully settled, or to enforce a minimum subscription length.
- **Cancellation:** You may cancel your Subscription Plan anytime by pausing your subscription. Upon pausing your subscription, you will lose access to your project space at the end of your current subscription period, including access to your apps and data. You are responsible for paying Dimagi through the end of the period for which Dimagi has provided its product and/or services.

For Annual Billing:

- Refund, Downgrade and Cancellation policy: If you cancel or downgrade within 90 days, starting from the start date of your Subscription Term, you will be charged on a prorated basis for the service provided, and rest will be fully refunded. After 90 days, the advance payment is non-refundable and the service will continue until the end of the Subscription Term. To be fair to everyone, there will be no exceptions.

Partial Billing: Dimagi may provide billing over partial periods of the Subscription Term at its discretion. At any time, and for any reason, we may provide a refund, discount, or other consideration to some or all of our customers in our sole discretion ("credits").

Taxes and other Payment Levies and Fees: Taxes and foreign currency exchange fees levied by any financial institution in connection with payments for Services are in addition to any subscription fees payable to Dimagi pursuant to a Plan. You agree to pay all taxes and foreign exchange fees associated with your subscription for any Services hereunder or otherwise provide Dimagi with a valid tax exemption certificate authorized by the appropriate taxing authority.

Termination

You are free to stop using our Services at any time. We reserve the right to suspend or terminate your access to the Services with notice to you if:

- (a) you violate these Terms or any other agreement between you and Dimagi (including the Acceptable Use Policy), as determined by Dimagi in its sole discretion,
- (b) you use the Services in a manner that could cause risk of harm or loss to us or other Dimagi customers or users.

If you are engaged in any activities described above, we may be able to provide you with advance notice via the email address associated with your account to remedy the activity that prompted us to contact you and give you the opportunity to export Your Data from our Services, but we cannot guarantee that we will provide such advance notice, as we may need to terminate your access to the Services immediately under certain circumstances (including those described below). If we are able to provide you with such advance notice and after delivery of such notice you fail to cease participating in such activities, we may terminate or suspend your access to the Services indefinitely.

For example, we will not provide you with advance notice prior to termination or suspension of your access to the Services where:

- (a) you are in material breach of these Terms or any other agreement between you and Dimagi (except as required by any such other agreement),
- (b) doing so could result in legal liability or compromise our ability to provide the Services to other users, or
- (c) we are prohibited from doing so by law.

Upon termination for any reason, you agree to destroy all copies of the Software in your possession. Upon termination for any reason, we will use commercially reasonable efforts to make Your Data available to you for export for at least a two-week period following such termination. Upon your request, we will delete all data collected through your application from all servers within 30 days of receiving notice.

Discontinuation of Services

We may decide to discontinue the Services in response to unforeseen circumstances beyond Dimagi's control or to comply with a legal requirement. If we do so, we will make commercially reasonable efforts to give you prior notice so that you can export Your Data from our systems. If we discontinue Services in this way before the end of your Subscription Term you have paid us for, we will refund the portion of the fees you have pre-paid but have not received Services for.

Indemnification

You will indemnify, defend, and hold harmless Dimagi from and against all liabilities, damages, and costs (including settlement costs and reasonable attorneys' fees) arising out of any claim by a third party against Dimagi and its Affiliates regarding: (a) Your Data; (b) your use of the Services.

Services "AS IS"

We strive to provide great Services, but there are certain things that we cannot guarantee. TO THE FULLEST EXTENT PERMITTED BY LAW, DIMAGI AND ITS AFFILIATES, SUPPLIERS AND DISTRIBUTORS MAKE NO WARRANTIES ABOUT THE SERVICES. THE SERVICES ARE PROVIDED "AS IS.". WE ALSO DISCLAIM ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT, WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.

Limitation of Liability

WE DO NOT EXCLUDE OR LIMIT OUR LIABILITY TO YOU WHERE IT WOULD BE ILLEGAL TO DO SO—THIS INCLUDES ANY LIABILITY FOR DIMAGI'S OR ITS AFFILIATES' FRAUD OR GROSS NEGLIGENCE IN PROVIDING THE SERVICES. THIS PARAGRAPH DOES NO'T AFFECT CONSUMER RIGHTS THAT CAN NOT BE WAIVED OR LIMITED BY ANY CONTRACT OR AGREEMENT.

IN NO EVENT WILL DIMAGI, ITS AFFILIATES, SUPPLIERS OR DISTRIBUTORS BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, OR ANY LOSS OF USE, DATA, BUSINESS, REVENUES, OR PROFITS (IN EACH CASE WHETHER DIRECT OR INDIRECT), REGARDLESS OF LEGAL THEORY, AND IN EACH CASE REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT DIMAGI HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES,

AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

IF YOU USE THE SERVICES FOR ANY COMMERCIAL, BUSINESS OR RE-SALE PURPOSE, DIMAGI, ITS AFFILIATES, SUPPLIERS OR DISTRIBUTORS WILL HAVE NO LIABILITY TO YOU FOR ANY LOSS OF PROFIT, LOSS OF BUSINESS, BUSINESS INTERRUPTION, OR LOSS OF BUSINESS OPPORTUNITY. DIMAGI AND ITS AFFILIATES ARE NOT RESPONSIBLE FOR THE CONDUCT, WHETHER ONLINE OR OFFLINE, OF ANY USER OF THE SERVICES.

TO THE FULLEST EXTENT PERMITTED BY LAW, DIMAGI'S AGGREGATE LIABILITY UNDER THESE TERMS OR ANY OTHER AGREEMENT BETWEEN YOU AND DIMAGI WILL NOT EXCEED THE AMOUNT PAID BY YOU TO DIMAGI HEREUNDER DURING THE TWELVE MONTHS PRIOR TO THE EVENT GIVING RISE TO LIABILITY.

Resolving Disputes

For Users and Customers Based in the United States of America: Any dispute arising in connection with these Terms which cannot be amicably settled between us ("Parties") through Alternative Dispute Resolution (ADR) procedures, if any, shall be arbitrated under the Rules of Commercial Arbitration of the American Arbitration Association by binding arbitration located in The Commonwealth of Massachusetts. Any resulting arbitral decision shall be final and binding on both parties. In resolving a dispute hereunder, the parties agree that these Terms will be interpreted in accordance with the substantive laws of The Commonwealth of Massachusetts.

For Users and Customers Based Outside of the United States of America: Any dispute arising in connection with these Terms which cannot be amicably settled between us through Alternative Dispute Resolution (ADR) procedures, if any, shall be arbitrated in accordance with the UNCITRAL Arbitration Rules. The arbitration shall take place in New York. Any resulting arbitral decision shall be final and binding on both parties. In resolving a dispute hereunder, the parties agree these Terms will be interpreted in accordance with the substantive laws of New York.

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. Class arbitrations, class actions, private attorney general actions, and consolidation with other arbitrations are not allowed.

Controlling Law

To the fullest extent permitted by law, these Terms will be governed by the laws of The Commonwealth of Massachusetts except for its conflicts of laws principles.

Entire Agreement

These Terms, together with the [Privacy Policy](#), the [Business Agreement](#), the [Acceptable Use Policy](#), and the other documents and materials referenced herein or otherwise published by Dimagi from time to time governing use of the Services, constitute the entire agreement between you and Dimagi with respect to the subject matter of these Terms, and supersede and replace any other prior or contemporaneous agreements, understandings, or terms and conditions applicable to the subject matter of these Terms except as otherwise agreed in writing between you and Dimagi. These Terms create no third party beneficiary rights.

Waiver, Severability & Assignment

Dimagi's failure to enforce a provision is not a waiver of its right to do so at a later date or time. If any portion of these Terms is found unenforceable, the remaining provisions of the Terms will remain in full effect and an enforceable term will be substituted reflecting our intent as closely as possible. You may not assign any of your rights under these Terms, and any such attempt will be void. Dimagi may assign its rights to any of its affiliates or subsidiaries, or to any successor in interest of any business associated with the Services.

Modifications

We may revise these Terms from time to time and the most current version will always be posted on the Dimagi's website. If a revision, in Dimagi's sole discretion, is material, we will notify you (by, for example, sending an email to the email address associated with your account). You are responsible for checking these postings regularly. By continuing to access or use the Services after revisions become effective, you agree to be bound by the revised Agreement. If you do not agree to the revised terms, you may not access or otherwise use the Services.