

THIS AGREEMENT CONTAINS A MANDATORY ARBITRATION PROVISION AND WAIVER OF JURY TRIAL. PLEASE READ IT CAREFULLY BEFORE AGREEING.

Application Terms of Service

Last updated: March 2024

She Matters Incorporated (hereinafter “She Matters,” “we” or “us”) provides this application (the “App”), and the associated data, services, information, tools, functionality, updates and similar materials (collectively, the “Service”), subject to your agreement to and compliance with the conditions set forth in this Application Terms of Service agreement (the “Agreement”).

This Agreement sets forth the legally binding terms and conditions governing your access to and use of the Service. By accessing or using the Service or otherwise entering into this Agreement, you are creating a binding contract with us. If you do not agree to these terms and conditions, you may not access or use the Service.

We may revise or update this Agreement by posting an amended version through the Service and making you aware of the revisions, which may be through posting to our website, the Service or otherwise. Your continued access to or use of the Service following our notice of changes to this Agreement (or other acceptance method) means you accept such changes. Please refer to the “Last updated” date above to see when the Agreement was last updated.

This Agreement incorporates by reference our privacy policy [\[PP link\]](#) (the “Privacy Policy”), as may be amended from time to time and which is made a part of these Terms as if recited here in full.

1. Right to Access

As long as you are in compliance with the conditions of this Agreement and all incorporated documents, we hereby grant you a limited, revocable, non-assignable, non-transferrable, non-sublicensable, non-exclusive right to access and use the Service for your internal business purposes only. No rights not explicitly listed herein are granted.

2. Overview

The Service is designed to, among other things, enable you to log and track certain postpartum-related health conditions and symptoms using the App. The App may be available for download to your mobile device from the Apple App Store, Google Play Store or other similar application marketplace (each an “App Store”). In order to access and use the App, you must create an account with the Service pursuant to the instructions on our website or the App Store (an “Account”).

For the purposes of this Agreement, if you are an employee, agent, or other representative of a company or an organization, “you”, “your”, and similar terms shall refer to such entity and you hereby represent your ability to bind that company legally to the terms of this Agreement.

3. User Eligibility

You must be at least 18 years old to use the Service. By using the Service, you represent that you meet the applicable minimum age requirement.

Some parts or all of the Service may not be available to the general public, and we may impose eligibility rules from time to time. We reserve the right to amend or eliminate these eligibility requirements at any time.

By requesting to use, registering to use and/or using the Service, you represent and warrant that you have the right, authority and capacity to enter into this Agreement and you commit to abide by all of the terms and conditions hereof. You also represent and warrant that you are not a competitor of She Matters.

4. Important Notices

We do not represent or warrant that access to the Service will be error-free or uninterrupted, or without defect, and we do not guarantee that users will be able to access or use the Service, or its features, at all times.

The Service may contain typographical errors or inaccuracies, and may not be complete or current. We reserve the right to correct any such errors, inaccuracies or omissions and to change or update information at any time without prior notice.

We reserve the right at any time and from time to time to modify or discontinue, temporarily or permanently, the Service, or any part thereof, with or without notice.

5. No Medical Advice

She Matters is not a healthcare provider and the Service is not intended to replace the services of a licensed, trained physician or other healthcare provider. While the Service may provide general medical information, the Service cannot and is not intended to provide medical advice, diagnosis, treatment or recommendations of any kind. Never disregard, avoid or delay obtaining medical care from your doctor or other qualified healthcare provider because of something you have read on the Service.

DO NOT USE THE SERVICE FOR EMERGENCY MEDICAL NEEDS. IF YOU ARE EXPERIENCING A MEDICAL EMERGENCY, YOU SHOULD SEEK EMERGENCY MEDICAL TREATMENT, WHICH MAY INCLUDE DIALING "911" OR VISITING YOUR NEAREST EMERGENCY DEPARTMENT.

She Matters does not recommend or endorse any specific drugs, tests, healthcare providers, products, procedures, opinions, "off-label" drug uses or other information that may be mentioned on the Service. You are solely responsible for your decision to use the Service and reliance on any information obtained through the Service is solely at your own risk. You agree that we and our affiliates, service providers and licensors are not responsible or liable for any claim, loss, or damage arising from your use of any information obtained through your use of the Service.

6. Rules of Conduct

Your access to and use of the Service is conditioned on your compliance with the terms of this Agreement, including but not limited to these rules of conduct.

You agree not to distribute, upload, make available or otherwise publish through the Service any video, images, audio, data, information, text, documents, or similar materials ("User Data") that:

- are unlawful or encourage another to engage in anything unlawful;
- contain a virus or any other similar programs or software which may damage the operation of our or another's computer;
- violate the rights of any party or infringe upon the patent, trademark, trade secret, copyright, right of privacy or publicity or other intellectual property right of any party; or
- are libelous, defamatory, pornographic, obscene, lewd, indecent, inappropriate, invasive of privacy or publicity rights, abusing, harassing, threatening or bullying.

You further agree that you will not do any of the following:

- breach, through the Service, any agreements that you enter into with any third parties;
- stalk, harass, injure, or harm another individual through the Service;

- modify, adapt, translate, copy, reverse engineer, decompile or disassemble any portion of the Service;
- interfere with or disrupt the operation of the Service, including restricting or inhibiting any other person from using the Service by means of hacking or defacing;
- transmit to or make available in connection with the Service any denial of service attack, virus, worm, Trojan horse or other harmful code or activity;
- attempt to probe, scan or test the vulnerability of a system or network of the Service or to breach security or authentication measures without proper authorization;
- take any action that imposes, or may impose, in our sole discretion, an unreasonable or disproportionately large load on our infrastructure;
- harvest or collect the email address, contact information, or any other personal information of other users of the Service;
- use any means to crawl, scrape or collect content from the Service via automated or large group means;
- submit, post or make available false, incomplete or misleading information to the Service, or otherwise provide such information to us;
- register for more than one user account;
- impersonate any other person or business;
- access or attempt to access any portion of the Service that is not public; or
- override or attempt to override any security measures in place on the Service.

You must keep your username, password and any other information needed to log in to the Service, if applicable, confidential and secure. We are not responsible for any unauthorized access to your account or profile by others.

You agree that you will not violate any applicable law or regulation in connection with your use of the Service.

Notwithstanding anything herein to the contrary, we reserve the right, in our sole discretion, to protect our users from violators and violations of these rules of conduct, including but not limited to restricting your access to and use of the Services, restricting or terminating your ability to upload User Data, immediately terminating your access to of the Service, or terminating your access to the Service by blocking certain IP addresses from accessing the Service. Notwithstanding the foregoing, our unlimited right to terminate your access to the Service shall not be limited to violations of these rules of conduct.

7. User Data Submitted or Made Available to Us

You are under no obligation to submit anything to us, and unless otherwise noted, we will not claim ownership of any User Data. However, in order for us to provide the Service, we need your permission to process, display, reproduce and otherwise use User Data you make available to us.

Therefore, if you choose to submit any User Data, including any User Data submitted via, or otherwise made available through the Service, you hereby grant to us a perpetual, irrevocable, transferable, sub-licensable, non-exclusive, worldwide, royalty-free license to reproduce, use, modify, display, perform, transmit, distribute, translate and create derivative works from any such User Data, including without limitation creating derivative works of the User Data, or distributing part or all of the User Data in any media format through any media channels.

By submitting any User Data to us you hereby agree, warrant and represent that: (a) the User Data do not contain proprietary or confidential information, and the provision of the User Data is not a violation of any applicable law or any third-party's rights; (b) all such User Data are complete, accurate and true, (c) we are not under any confidentiality obligation relating to the User Data; (d) we shall be entitled to use or disclose the User Data in any way; (e) you are not entitled to compensation or attribution from us in exchange for the User Data; and (f) to the extent required, you have obtained all requisite consents and permissions for you and us to use the User Data with respect to the Service and the Agreement.

You acknowledge that we are under no obligation to maintain the Service, or any information, materials, User Data or other materials you submit, post or make available to or on the Service. In addition, we do not pre-screen any User Data or materials, but we reserve the right to refuse, withhold, remove and or discard any such material at any time.

You understand that by sharing information or User Data on the Service, by participating in the Service, and by requesting information to be sent through, or downloading information from, the Service, you may be revealing information about yourself, the entity that you represent, or your business that may include financial, credit, or similar information, including with other Users. You understand and acknowledge that you are fully aware and responsible for the impact of sharing such materials and using the Service, and you agree that we shall not be held responsible, and we shall be released and held harmless by you from any liability or damages arising out of such conduct.

8. Intellectual Property

Our graphics, logos, names, designs, page headers, button icons, scripts, and service names are our trademarks, trade names and/or trade dress. The “look” and “feel” of the Service (including color combinations, button shapes, layout, design and all other graphical elements) are protected by U.S. copyright and trademark law. All product names, names of services, trademarks and service marks (“She Matters Marks”) are our property or the property of their respective owners, as indicated. You may not use the She Matters Marks or copyrights for any purpose whatsoever other than as permitted by this Agreement.

You acknowledge that the software used to provide the Service, and all enhancements, updates, upgrades, corrections and modifications to the software, all copyrights, patents, trade secrets, or trademarks or other intellectual property rights protecting or pertaining to any aspect of the software (or any enhancements, corrections or modifications) and any and all documentation therefor, are and shall remain our sole and exclusive property or that of our licensors, as the case may be. This Agreement does not convey title or ownership to you, but instead gives you only the limited rights set forth herein.

9. Data Collection and Use

You understand and agree that our Privacy Policy shall govern the collection and use of data obtained by us through your access to and use of the Service.

10. Enforcement and Termination

We reserve the right to deny all or some portion of the Service to any user, in our sole discretion, at any time. Without limiting the foregoing or assuming additional legal obligations, we have a policy of terminating repeat violators of the Copyright Act, in accordance with applicable law.

All grants of any rights from you to us related to User Data or other materials, including but not limited to copyright licenses, shall survive any termination or expiration of this Agreement. Further, your representations, defense and indemnification obligations survive any termination or expiration of this Agreement.

11. Links and Third-Party Content

The Service may contain links to the websites or materials of third parties. Such links are provided for informational purposes only, and we do not endorse any website or services through the provision of such a link.

The Service may contain articles, text, imagery, video, audio, data, information and other similar materials originating from third parties. We do not endorse any third party content that may appear on the Service or that may be derived from content that may appear on the Service, even if such content was summarized, collected, reformatted or otherwise edited by us.

To the extent that you use any functionality of the Service to link to or submit third party User Data or other materials or information, you shall obtain all requisite consents and permissions for you and us to use those materials with respect to the Service and the Agreement.

12. DISCLAIMERS AND LIMITATION ON LIABILITY

EXCEPT WHERE NOT PERMITTED BY LAW, YOU AGREE AND ACKNOWLEDGE THAT THE SERVICE IS PROVIDED "AS IS" AND "AS AVAILABLE", WITHOUT ANY WARRANTY OR CONDITION, EXPRESS, IMPLIED OR STATUTORY, AND WE, AND OUR AFFILIATES, PARENTS, SUBSIDIARIES, OFFICERS, DIRECTORS, SHAREHOLDERS, MEMBERS, MANAGERS, EMPLOYEES, LICENSORS AND SUPPLIERS (COLLECTIVELY, THE "RELATED PARTIES"), SPECIFICALLY DISCLAIM ANY IMPLIED WARRANTIES OF TITLE, ACCURACY, SUITABILITY, APPLICABILITY, MERCHANTABILITY, PERFORMANCE, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR ANY OTHER WARRANTIES OF ANY KIND IN AND TO THE SERVICE. NO ADVICE OR INFORMATION (ORAL OR WRITTEN) OBTAINED BY YOU FROM US SHALL CREATE ANY WARRANTY.

ACCESS TO AND USE OF THE SERVICE IS AT YOUR SOLE RISK. WE DO NOT WARRANT THAT YOU WILL BE ABLE TO ACCESS OR USE THE SERVICE AT THE TIMES OR LOCATIONS OF YOUR CHOOSING; THAT THE SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE; THAT DEFECTS WILL BE CORRECTED; THAT DATA TRANSMISSION OR STORAGE IS SECURE OR THAT THE SERVICE IS FREE OF INACCURACIES, MISREPRESENTATIONS, VIRUSES OR OTHER HARMFUL INFORMATION OR COMPONENTS.

TO THE MAXIMUM EXTENT PERMITTED BY LAW, AND EXCEPT AS PROHIBITED BY LAW, IN NO EVENT SHALL WE OR OUR RELATED PARTIES BE LIABLE TO YOU BASED ON OR RELATED TO THE SERVICE, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, AND SHALL NOT BE RESPONSIBLE FOR ANY LOSSES OR DAMAGES, INCLUDING WITHOUT LIMITATION DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR SPECIAL DAMAGES ARISING OUT OF OR IN ANY WAY CONNECTED WITH ACCESS TO OR USE OF THE SERVICE.

NOTWITHSTANDING THE FOREGOING, IN THE EVENT THAT A COURT SHALL FIND THAT THE ABOVE DISCLAIMERS ARE NOT ENFORCEABLE, THEN, TO THE MAXIMUM EXTENT PERMISSIBLE BY LAW, YOU AGREE THAT NEITHER WE NOR ANY OF OUR SUBSIDIARIES, AFFILIATED COMPANIES, EMPLOYEES, MEMBERS, SHAREHOLDERS, OFFICERS OR DIRECTORS SHALL BE LIABLE FOR (1) ANY DAMAGES IN EXCESS OF THE GREATER OF (A) \$500.00 OR (B) THE AMOUNTS PAID TO, OR BY, YOU THROUGH THE SERVICE WITHIN THE LAST SIX MONTHS, OR (2) ANY INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL, OR CONSEQUENTIAL DAMAGES OR LOSS OF USE, LOST REVENUE, LOST PROFITS OR DATA TO YOU OR ANY THIRD PARTY FROM YOUR USE OF THE SERVICE OR ANY GOODS SOLD OR PROVIDED BY US. THIS LIMITATION SHALL APPLY REGARDLESS OF THE BASIS OF YOUR CLAIM, WHETHER OTHER PROVISIONS OF THIS AGREEMENT HAVE BEEN BREACHED, OR WHETHER OR NOT THE LIMITED REMEDIES PROVIDED HEREIN FAIL OF THEIR ESSENTIAL PURPOSE.

13. Indemnification

You agree to defend, indemnify and hold us and our affiliates, subsidiaries, suppliers, licensors, and licensees, and each of their officers, directors, shareholders, members, employees and agents harmless from all allegations, judgments, awards, losses, liabilities, costs and expenses, including but not limited to reasonable attorney's fees, expert witness fees, and costs of litigation ("Costs") arising out of or based on: (a) User Data you submit, link to, post to or transmit through the Service; (b) your access to or use of the Service; (c) your violation of this Agreement; (d) any conduct, activity or action which is unlawful or illegal under any state, federal or common law, or is violative of the rights of any individual or entity, engaged in, caused by, or facilitated in any way through the access to or use of the Service; and (e) allegations that User Data you submit, link to, post to or transmit through the Service infringes or misappropriates the intellectual property rights of, or violates other rights of, a third party. In the case of subsection (e) Costs shall include but not be limited to, any of our expenses related to responding to or complying with third party notices or demands.

In any matter in which you have agreed to indemnify us, you may not settle any matter or admit liability if, upon doing so, you are admitting liability or fault on our part, without our express written consent. We reserve the right to assume the exclusive defense and control of any matter otherwise subject to indemnification by you, and in such case, you agree to cooperate with our defense of such claim.

14. Governing Law and Jurisdiction; Arbitration

You agree that any claim or dispute arising out of or relating in any way to the Service will be resolved solely and exclusively by binding arbitration, rather than in court, except that you may assert claims in small claims court if your claims qualify. The Federal Arbitration Act and federal arbitration law apply to this agreement. The laws of the [State of New York] shall govern this Agreement, and shall be used in any arbitration proceeding.

There is no judge or jury in arbitration, and court review of an arbitration award is limited. However, an arbitrator can award on an individual basis the same damages and relief as a court (including injunctive and declaratory relief or statutory damages), and must follow the terms of this Agreement as a court would. Any arbitration between you and She Matters shall be presided over by one arbitrator.

To begin an arbitration proceeding, you must send an email requesting arbitration and describing your claim to [●].

Arbitration under this Agreement will be conducted by the American Arbitration Association (AAA) under its rules then in effect, shall be conducted in English, and shall be located in [New York, New York]. Payment of all filing, administration and arbitrator fees will be governed by the AAA's rules.

You and She Matters agree that any dispute resolution proceedings will be conducted only on an individual basis and not in a class, consolidated or representative action. If for any reason a claim proceeds in court rather than in arbitration, both you and She Matters agree that each have waived any right to a jury trial.

Notwithstanding the foregoing, you agree that we may bring suit in court to enjoin infringement or other misuse of intellectual property or other proprietary rights.

All aspects of the arbitration proceeding, and any ruling, decision or award by the arbitrator, will be strictly confidential for the benefit of all parties.

To the extent arbitrations does not apply, you agree that any dispute arising out of or relating to the Service, or to us, may only be brought by you in a state or federal court located in [New York, New York]. YOU HEREBY WAIVE ANY OBJECTION TO THIS VENUE AS INCONVENIENT OR INAPPROPRIATE, AND AGREE TO EXCLUSIVE JURISDICTION AND VENUE IN THE ABOVE LOCATION.

15. Policies for Children

The Service is not directed to individuals under the age of 18 years. In the event that we discover that an individual under the age of 13 years has provided personally identifiable information to us, we will make efforts to delete the individual's information if required by the Children's Online Privacy Protection Act or other applicable laws. Please see the Federal Trade Commission's website for (www.ftc.gov) for more information. For more information about our privacy practices with respect to the personal information of children, please see our Privacy Policy.

Notwithstanding the foregoing, pursuant to 47 U.S.C. Section 230 (d), as amended, we hereby notify you that parental control protections are commercially available to assist you in limiting access to material that is harmful to minors. More information on the availability of such software can be found through publicly available sources. You may wish to contact your internet service provider for more information.

16. General

Severability. If any provision of this Agreement is found for any reason to be unlawful, void or unenforceable, then that provision will be given its maximum enforceable effect, or shall be deemed severable from this Agreement and will not affect the validity and enforceability of any remaining provision.

Revisions. This Agreement is subject to change on a prospective basis at any time. In the event that we change this Agreement, you may be required to re-affirm the Agreement through use of the Service or otherwise. Your access to and use of the Service after the effective date of any changes will constitute your acceptance of such changes.

No Partnership. You agree that no joint venture, partnership, employment, or agency relationship exists between you and us as a result of this Agreement or your use of the Service.

Assignment. We may assign our rights under this Agreement, in whole or in part, to any person or entity at any time with or without your consent. You may not assign the Agreement without our prior written consent, and any unauthorized assignment by you shall be null and void.

Electronic Signatures. You agree that your use of any electronic signatures will be as valid as any manual signatures, if authorized by local law, and you will ensure that your use of electronic signatures is in conformance with local laws and regulations.

No Waiver. Our failure to enforce any provision of this Agreement shall in no way be construed to be a present or future waiver of such provision, nor in any way affect the right of any party to enforce each and every such provision thereafter. The express waiver by us of any provision, condition or requirement of this Agreement shall not constitute a waiver of any future obligation to comply with such provision, condition or requirement.

Notices. All notices given by you or required under this Agreement shall be in writing and [sent via email to [●]].

Equitable Remedies. You hereby agree that we would be irreparably damaged if the terms of this Agreement were not specifically enforced, and therefore you agree that we shall be entitled, without bond, other security, or proof of damages, to appropriate equitable remedies with respect to breaches of this Agreement, in addition to such other remedies as we may otherwise have available to us under applicable laws.

Entire Agreement. This Agreement, including the documents expressly incorporated by reference, constitutes the entire agreement between you and us with respect to the Service, and supersedes all prior or contemporaneous communications, whether electronic, oral or written.

Force Majeure. In no event shall we or our affiliates be liable to you for any damage, delay or failure to perform resulting directly or indirectly from any event outside of our reasonable control or any force majeure event.

17. Copyright Policy

If you believe in good faith that any material posted on our Service infringes the copyright in your work, please contact our copyright agent, designated under the Digital Millennium Copyright Act ("DMCA") (17 U.S.C. §512(c)(3)), with correspondence containing the following:

- A physical or electronic signature of the owner, or a person authorized to act on behalf of the owner, of the copyright that is allegedly infringed;
- Identification of the copyrighted work claimed to have been infringed;
- Identification, with information reasonably sufficient to allow its location of the material that is claimed to be infringing;
- Information reasonably sufficient to permit us to contact you;
- A statement that you have a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law; and
- A statement that the information in the notification is accurate, and under penalty of perjury, that you are authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

You acknowledge that if you fail to comply with all of the requirements of this policy, your DMCA notice may not be valid. For any questions regarding this procedure, or to submit a complaint, please contact our designated DMCA Copyright Agent:

Copyright Agent
She Matters Incorporated
[●]
e-mail: [●]

18. Complaint Policy (Including Trademark and Privacy)

If you believe in good faith that any material posted on the Service infringes any of your rights other than in copyright, or is otherwise unlawful, you must send a notice to [●] containing the following information:

- Your name, physical address, e-mail address and phone number;
- A description of the material posted on the Service that you believe violates your rights or is otherwise unlawful, and which parts of said materials you believe should be remedied or removed;
- Identification of the location of the material on the Service;
- If you believe that the material violates your rights, a statement as to the basis of the rights that you claim are violated;
- If you believe that the material is unlawful or violates the rights of others, a statement as to the basis of this belief;
- A statement under penalty of perjury that you have a good faith belief that use of the material in the manner complained of is not authorized and that the information you are providing is accurate to the best of your knowledge and in good faith; and
- Your physical or electronic signature.

If we receive a message that complies with all of these requirements, we will evaluate the submission, and if appropriate, in our sole discretion, we will take action. We may disclose your submission to the poster of the claimed violative material, or any other party.