



## **END USER LICENSE AGREEMENT**

This End User License Agreement (the "Agreement") is a legal agreement between you and SweetWater Health, LLC ("Company"). This Agreement contains the complete terms by which you may download the SweetBeatLife™ application software (the "Application") to your iPhone and use our online documentation and service. Company, the Application, the documentation, and our service may be individually or collectively referenced as "we" or "us." The Application and the corresponding online documentation, including all artwork and images contained therein, are Company's copyrighted works and may be used only pursuant to the terms of this Agreement. The unauthorized use of these copyrighted works constitutes an infringement of Company's copyright. The information provided in the documentation is furnished for informational use only and is subject to change without notice.

Except as permitted by our Agreement, no part of this Application or online documentation may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, electronic, mechanical, recording, or otherwise, without Company's prior written permission.

PLEASE CAREFULLY READ THE TERMS OF THE AGREEMENT SET FORTH HEREUNDER. BY DOWNLOADING OR OTHERWISE USING THE APPLICATION, YOU AGREE TO BE BOUND BY THE TERMS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, THEN YOU SHOULD NOT DOWNLOAD THE APPLICATION.

1. **INTELLECTUAL PROPERTY IN THE APPLICATION.** You acknowledge that no title to the intellectual property in the Application is transferred to you from us under this Agreement. You further acknowledge that all right, title, and interest in and to the Application and any know-how contained therein shall remain our exclusive property. You agree not to remove any trademark, copyright, or other proprietary notices on or in any portion of the Application as delivered and to reproduce all such notices on and in all authorized copies.

2. **GRANT OF LICENSE.** We grant to you a non-exclusive license (a) to access electronically, use, install, and display the Application on your iPhone for your own personal use; (b) to make a single back-up copy of the Application for archival and contingency purposes only; (c) to use the written materials and documentation; (d) to install and use exact copies of the Application on your iPhone; and (e) to use the data provided by the Application solely for your own personal use. You are obligated to inform all users of the Application of the terms and conditions of this Agreement. Your rights in the Application shall be limited to those expressly granted in this Agreement. Any use which exceeds the scope of this license grant shall be deemed to constitute a material breach of this Agreement.

3. RESTRICTIONS. You shall not distribute, share, rent, resell, lease, sublicense or otherwise disclose or transfer the Application to any third party. The Application contains our trade secrets, and to protect those trade secrets and our interest in the Application generally, you agree not to reverse engineer, decompile, translate, attempt to derive the source code, modify, or create derivative works of the Application in whole or in part, nor to permit any third party to do so. You shall not use our trademark SweetBeatLife™ nor any other of Company's logos, trademarks, or service marks. Any failure to abide by the restrictions set forth in this Section shall expressly constitute a material breach of this Agreement and may subject you to damages.

4. SERVICE. The Application will enable access to our services and website. Use of the service may require Internet access. Please be advised that data charges will apply when using the service. All use of our website and services will be governed by our Terms of Service and Privacy Policy then in effect, and you agree to accept our Terms of Service and Privacy Policy. We reserve the right to change, suspend, remove, or disable your access to our service at any time without notice. In no event will we be liable for the removal of or disabling of access to our service. We also may impose limits on the use of or access to our service, without notice or liability.

5. TERM; TERMINATION. This Agreement commences when you download the Application and remains in effect perpetually, unless otherwise terminated. This Agreement will automatically terminate upon notice in the event that you breach any term or condition of this Agreement. You understand that exceeding the scope of the license shall expressly constitute a material breach of this Agreement. Upon any material breach, your non-exclusive license shall cease and terminate, and you shall have no further right to use or display the Application or to use the documentation. In such case, you agree to destroy all copies, full or partial, of the Application. The following terms and conditions shall survive any termination of this Agreement until such time as they are exhausted: Sections 1, 5, 6, and 11-17.

6. PROPRIETARY INFORMATION. For the term of this Agreement and for a period of five (5) years thereafter, you agree to keep completely confidential and will not publish or otherwise disclose for any purposes the Proprietary Information furnished by us to you pursuant to this Agreement. For the avoidance of doubt, Proprietary Information shall include all of the proprietary, non-public information pertaining to us and the Application, including but not limited to any trade secrets contained within the Application or proprietary content contained within the Application and service. Notwithstanding the foregoing, "Proprietary Information" shall not include any information which you can demonstrate by your records (a) was in your knowledge or possession prior to our disclosure to you, (b) was in the public domain at the time of disclosure or subsequently entered the public domain through no fault of yours; (c) was disclosed to you by a third party with the right to make such a disclosure; or (d) was developed independently by you.

7. WARRANTY. Company warrants that the Application will perform substantially in accordance with the online documentation for a period of ninety (90) days from the date of purchase. If for any reason the Application does not perform in accordance with this warranty, you should notify us of the issue as soon as possible. Our entire liability and your sole and exclusive remedy shall be to use reasonable commercial measures at our expense to correct the nonperformance, replace the Application, or to provide a workaround.

8. DISCLAIMER OF OTHER WARRANTIES. The Application, our online documentation, and our service are provided on an "as is" basis. You expressly acknowledge and agree that you solely assume all risk as to satisfactory quality, performance, accuracy, and effort. We

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disclaim any and all warranties regarding viruses and other destructive software with respect to the download of the Application to your iPhone or your use of the service. We make commercially reasonable efforts to secure our network but we cannot warrant or represent that you will not suffer any loss or damage to your iPhone or other data stored to your iPhone if you download the Application or use our service. We cannot warrant or represent that our service will be available on a continuous and uninterrupted basis. Your use of the Application and your reliance on any data provided by the Application is at your own risk. You acknowledge and agree the Application is not a an EKG or other medical device and should not be used in lieu of any medical or psychological treatment. You acknowledge and agree that you should not use the Application to make health decisions, and that none of the feedback or data provided in the Application should be interpreted as providing a medical or psychological diagnosis. We cannot guarantee that the data provided by the Application will be accurate or complete, nor that such data will provide an objective or direct measure of any specific state. WITH THE EXCEPTION OF THE WARRANTY SET FORTH IN SECTION 7 ABOVE AND TO THE EXTENT PERMITTED BY LAW, WE EXPRESSLY DISCLAIM ALL OTHER WARRANTIES, CONDITIONS, RESULTS, GUARANTEES, OR REPRESENTATIONS WITH RESPECT TO THE APPLICATION, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, MERCHANTABILITY OR SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT OF THIRD PARTY RIGHTS, OR ARISING FROM THE COURSE OF PERFORMANCE, COURSE OF DEALING, OR USAGE OF TRADE. WE DO NOT WARRANT THAT ALL ERRORS, BUGS, OR DEFECTS CAN OR WILL BE CORRECTED OR THAT THE APPLICATION WILL OPERATE BUG-FREE, ERROR-FREE, CONTINUOUSLY, OR UNINTERRUPTED. NO ORAL OR WRITTEN INFORMATION OR ADVICE THAT WE OR ANY AUTHORIZED REPRESENTATIVE PROVIDES TO YOU SHALL CREATE A WARRANTY. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES OR LIMITATIONS ON APPLICABLE STATUTORY RIGHTS OF A CONSUMER, SO THE ABOVE EXCLUSION AND LIMITATION MAY NOT APPLY TO YOU.

9. INFRINGEMENT. We take claims of infringement very seriously and reserve the right to remove our Application from the Apple's catalog of Applications, in the event that we are notified that our Application is infringing. You expressly acknowledge that, in the event we receive such a notice, we and not Apple or its subsidiaries, will be solely responsible for the investigation, defense, settlement, and discharge of any infringement claim.

10. EXPORT. You may not use or otherwise export or re-export the Application except as authorized by United States law and the law of the jurisdiction in which the Application was obtained. In particular, without limitation, the Application may not be exported or re-exported (a) into any U.S. embargoed countries or (b) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce Denied Person's List or Entity List. By using the Application, you represent and warrant that you are not located in any such country or on any such list. You also agree that you will not use this Application for any purpose prohibited by United States law, including without limitation, the development, design, manufacture, or production of nuclear, missiles, or chemical or biological weapons.

11. RELEASE OF CLAIMS. To the maximum extent permitted by applicable law, you hereby release and waive all claims against us, Apple and its subsidiaries, and all of our respective officers, directors, members, managers, employees, independent contractors, representatives and agents from any and all liability for claims (actual and/or consequential), costs, and expenses (including litigation costs and attorneys' fees of any kind and nature

arising from or in any way related to the Application, the services, and this Agreement. If applicable, you waive your rights under California Civil Code Section 1542, which states, "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor." You understand that any fact relating to any matter covered by this release may be found to be other than now believed to be true, and accept and assume the risk of such possible differences in fact. In addition, you expressly waive and relinquish any and all rights which you may have had under any other state or federal statute or common law principle of similar effect, to the fullest extent permitted by law.

12. INDEMNIFICATION. You agree to indemnify, defend, and hold harmless us, Apple and its subsidiaries, and both our and the other parties' respective officers, directors, members, managers, employees, independent contractors, representatives, and agents from and against any and all loss, damage liability, and expense (including without limitation reasonable fees for attorneys and experts) arising out of any claim, demand, cause of action, debt or liability, including reasonable attorneys' fees, to the extent that such action is based upon a claim that (a) if true, would constitute a breach of any representations or agreements by you hereunder; (b) arises out of any negligence or willful misconduct by you; (c) results from your improper use of a third party's personal information or data; (d) results from your improper use of the Application as a medical device; (e) is based on any third party claim that arises out of this Agreement; or (f) arises out of any act by you or any third party to make any modifications to the code or other copyrightable elements of the Application.

13. LIMITATION OF LIABILITY; CONSEQUENTIAL DAMAGES. Notwithstanding anything to the contrary, our liability under this Agreement shall be limited to the total license fee paid to us for the download and use of the Application. To the extent permitted by law, neither we nor Apple, Apple's subsidiaries, or our collective officers, directors, members, managers, employees, independent contractors, representatives, or agents will be liable for any incidental, consequential, indirect, special, or punitive damages, or lost profits or data, damage to your iPhone, or any other pecuniary loss arising out of the use or inability to use the Application or iPhone, arising out of, or related to, this Agreement, even if we have been advised of the possibility thereof, and regardless of whether the claim is based on contract, tort, or another theory or cause of action.

14. MISCELLANEOUS. Our relationship will be that of third party contractors, and neither of us will have the right power, or authority to assume, create, or incur any expense, liability, or obligation, express or implied, on behalf of the other. You may not assign or transfer any of your rights or obligations under this Agreement without our prior written consent. You agree that we may assign this Agreement without prior notice in the event of a merger, acquisition, or sale of all or part of our business. No waiver of any breach of the terms of this Agreement, no matter how long continuing or how often repeated, shall be deemed a waiver of any subsequent breach thereof, nor shall any delay or omission to exercise any right, power, or privilege hereunder be deemed a waiver of such right, power, or privilege. If any provision of this Agreement is held unenforceable or in conflict with the law of any jurisdiction, the validity of the remaining provisions shall not be affected by such holding. The meaning of that provision will be construed to the extent feasible, to render the provision unenforceable. If no feasible interpretation will save such provision, it is to be severed from the remainder of the terms of this Agreement, which are to remain in full force and effect. This Agreement contains the entire understanding of the Parties with respect to the subject matter contained herein, and shall supersede all prior agreements and understandings, whether written or oral.

15. **THIRD PARTY BENEFICIARIES.** You agree that this Agreement is solely between you and us, that Apple is not a party to this Agreement, and has no obligation to you under this Agreement; however, you also agree that Apple and Apple's subsidiaries are third party beneficiaries of this Agreement, and that, upon your acceptance of this Agreement, Apple and its subsidiaries will have the right to enforce this Agreement against you as a third party beneficiary.

16. **GOVERNING LAW; DISPUTE RESOLUTION.** This Agreement is governed by the laws of the state of California, without regard to conflicts of law principles. Your use of the Application or service may also be subject to other local, state, national, or international laws, and you are solely responsible for knowing and complying with all such laws. With the sole exception of any equitable actions, all disputes arising under this Agreement shall be submitted to binding arbitration in San Jose, California under the Commercial Rules of the American Arbitration Association by one arbitrator mutually agreed upon both you and us in accordance with the aforementioned Rules. Costs of the arbitration, including administrative and arbitrators' fees, shall be shared equally by each of us. The arbitration award shall be final and each of us shall comply in good faith to the entry of the arbitrator's award in any court having jurisdiction. If judicial enforcement or review of the arbitrator's decision is sought, the prevailing one of us shall be entitled to costs and reasonable attorneys' fees. For the avoidance of doubt, all claims you bring against us must be resolved in accordance with this Section. All claims filed or brought against us contrary to this Section shall be considered improperly filed. Should you file a claim contrary to this Section, you agree that we may recover attorneys' fees and costs of up to One Thousand Dollars (\$1000.00) provided that we have notified you in writing of the improperly filed claim and you have failed to properly withdraw the claim.

17. **INQUIRIES.** Should you have any questions concerning this Agreement, or if you desire to contact us for any other reason, please email our office:  
SweetWater Health, LLC,  
support@sweetwaterhrv.com.

## **TERMS OF SERVICE**

The following Terms of Service (the "Agreement") govern the use of the SweetWater Health, LLC ("Company") mobile application and services made available through our website at [www.beathealthy.com](http://www.beathealthy.com) (the "Website") by members and users, and are an agreement between you and Company. Please read the following terms and conditions carefully as they are legally binding.

BY CHECKING THE "I ACCEPT" BOX DURING ACCOUNT CREATION AND CONTINUING TO USE THE COMPANY SERVICE THEREAFTER, YOU REPRESENT AND WARRANT THAT YOU: (i) ARE AUTHORIZED TO SIGN FOR AND BIND THE CONTRACTING PARTY AND (ii) AGREE TO BE BOUND BY ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, INCLUDING THE COMPANY PRIVACY POLICY. IF YOU ARE NOT AUTHORIZED TO SIGN FOR AND BIND THE CONTRACTING PARTY, OR OTHERWISE DO NOT AGREE WITH THE TERMS AND CONDITIONS OF THIS AGREEMENT, DO NOT COMPLETE THE REGISTRATION PROCESS.

COMPANY RESERVES THE RIGHT TO MODIFY THESE TERMS AND CONDITIONS AT ANY TIME AND WILL NOTIFY YOU OF ANY SUCH CHANGES BY EMAIL. NOTHING IN COMPANY'S BROCHURES, FAQ'S OR OTHER COMMUNICATIONS DESCRIBING ITS SERVICES IS INTENDED TO SUPERSEDE OR MODIFY THESE TERMS AND CONDITIONS IN ANY MANNER.

### **THE SERVICES**

Company's services are designed to enable you to monitor your physical and emotional stress levels, to upload your session information to a web server and edit the information, post the information as your status on FaceBook and tweets on Twitter along with your location information if location service is enabled on your mobile phone, to review your sessions/records at your convenience, and to give specific authorization to others who may access your sessions/records. Company's services are entirely dependent upon your own actions and any information you upload and submit to SweetWater Health, LLC.

For further information about how the Company services can be used, visit: [www.beathealthy.com](http://www.beathealthy.com)

### **REGISTRATION**

You do not have to register in order to visit our Website. In order to access many of the features of this Website, however, you will need to register and create an account. When you register, you may be asked to provide the following information: your user name, your email address, and your Facebook and/or Twitter account login. You may subsequently be asked to provide your name and gender.

If you register as a member, you will be required to select a password. You should not disclose your password to any third party. You are solely responsible for keeping your password confidential and for the activity that occurs on your account. We will never ask you to send your password or other sensitive information to us in an email or to enter it via any website other than one with the URL of our Website. If you suspect any unauthorized use of your account or access to your password, please change your password immediately and contact us. You agree to immediately notify us of any unauthorized use of your password or

account or any other breach of security. You are solely liable for any loss or damage arising from your failure to comply with this Section.

All information provided by you in your registration must be truthful and complete. We may suspend or cancel your registration without notice if we have any reason to believe that this is not the case. In addition, we may suspend or cancel your registration with us at any time without prior warning if you fail to comply with these Terms of Service, without limiting any other remedies to which we may be entitled. Furthermore, if we consider you to have committed fraud or any other illegal activity, we may report you to the appropriate law enforcement authorities.

#### ELIGIBILITY TO USE WEBSITE AND SERVICES

Only adults, who are at least eighteen (18) years of age, are eligible to use our Website and services. In addition, to use our Website and services, you must be fully competent to enter into and to comply with the terms, conditions, obligations, representations, and warranties set forth in these Terms of Service. You may register yourself or an adult family member, provided that the adult family member either accepts the Terms of Service separately before his or her account activates or that you have a conservatorship or power of attorney with respect to the adult family member.

Children over the age of fourteen (14) may be registered by their parent or guardian to use the service, provided that such parent or guardian manages the account for such child directly. The parent or guardian is responsible for providing supervision to ensure the minor's authentication information is kept secure and the credibility of the health record is maintained.

By using our Website and services, you represent and warrant that you have the right, authority, and capacity to enter into these Terms of Services and can abide by all of the terms and conditions set forth therein.

#### PAYMENT FOR SERVICES

You agree to pay all charges incurred in connection with your membership for the Company services (including any applicable taxes) at the rates in effect when the charges were incurred. Company may change the fees and charges then in effect, or add new charges, by giving you advance notice by email. The fees for all Company services are set forth on our Website. **YOU ACKNOWLEDGE AND AGREE THAT YOU WILL PAY FOR ALL REQUESTED COMPANY SERVICES AND PRODUCTS IN ACCORDANCE WITH COMPANY'S PRICING GUIDELINES.** Failure to pay for services or products as hereby agreed may result in additional late payment charges and/or collection charges that may include charges for collection services incurred by Company in its lawful efforts to collect any and all of your past due amounts.

#### REFUND POLICY

A new member may cancel their membership within the first 30 days of service for a full refund. Members may obtain a cancellation form through our Website at [support@sweetwaterhrv.com](mailto:support@sweetwaterhrv.com).

Except as otherwise stated in this Refund Policy, all payments are nonrefundable.

## TERM: RENEWAL OF SERVICE

The term of your membership will be as agreed to when you sign up for any services. At the end of your membership, you will be automatically renewed at the then-current renewal rate (billed to the credit card on file). This does not apply to gift certificates or other special discount programs.

Your membership will automatically terminate upon notice in the event that you breach any term or condition of this Agreement. In addition, you may cancel your membership at any time upon notice to us.

## SERVICE ASSISTANCE

You may contact Company with questions about your account; receive technical assistance or information about our services by emailing our Customer Service support@sweetwaterhrv.com.

In the event of interruptions in electric power, phone lines, internet connections or other means of communication, or if any other events beyond Company's control (including but not limited to acts of God, acts of war, or acts of terrorism), access to the Website, Company's business office may be disrupted for a period of time or even permanently. YOU ACKNOWLEDGE AND AGREE THAT COMPANY IS NOT RESPONSIBLE FOR ANY ADVERSE CONDITION OR EVENT OCCURRING DUE TO AN INTERRUPTION OF SERVICE FOR REASONS BEYOND COMPANY'S CONTROL.

## DATA LICENSE

In consideration for the Company services provided to you, you acknowledge and hereby agree to grant to Company a non-exclusive license to store, index, manage, copy and/or distribute your recorded sessions and information without personal identifying information in any electronic format as collected, stored or distributed by Company for a period concurrent with your membership, or, in the event that your membership is terminated for any reason whatsoever, personal identifying information will be removed immediately and anonymous information may be kept. Our license will include use of any electronic copy of Company-based records and information regardless of whether such copy is made from the Website or from any other Company authorized or unauthorized electronic medium.

## PRIVACY

Any information you provide to Company will be handled in accordance with our Privacy Policy then in effect, which you can review by going to our home page and clicking on the link to the Company Privacy Policy.

## USE OF THE COMPANY WEBSITE

Your authorized use of our Website is limited to learning more about Company and its services, registration as a member of Company, and use of the Company services, including accessing sessions available through the Website. You agree not to use our Website for any other uses, including, without limitation, to store, aggregate, reproduce or distribute information available on the Website in any manner; to interfere with or disrupt the operation of the Website or the networks or servers connected to the Website in any manner; to impersonate any person or entity or otherwise misrepresent your affiliation with any person



or entity; to upload, post or otherwise transmit any content that infringes the proprietary rights of any third party, or is otherwise unlawful or offensive; to harass or otherwise harm Company or any other person or entity; or to engage in commercial activities of any kind. Any unauthorized use of the Website will result in termination of all rights to use the Website, suspension of your membership, and Company taking action against you to the full extent provided by law.

#### DISCLAIMER OF WARRANTIES

Your use of our service and Website is at your sole risk.

The materials available to you on this Website or accessible through our service have been prepared for informational and educational purposes only and should not be construed as medical advice or a professional medical opinion on any specific facts or circumstances. Information on this Website or available through our service is not guaranteed to be accurate, up-to-date, correct or complete, and you should not rely on it to diagnose your own medical condition to make any other medical or health-related decisions. We expressly disclaim all liability for actions taken or not taken based on any of the contents of this Website. If we provide any specific examples of outcomes here, please be advised that we cannot guarantee a similar outcome in your case or the case of any third party. The content on this Website and available through our services is intended to supplement traditional medical care, but is not intended to be a substitute for professional medical advice, diagnosis, or treatment. For best results, you should use our Website and services as a supplement to, rather than a replacement for, any other medical or healthcare treatment that you receive.

YOU ACKNOWLEDGE AND AGREE THAT COMPANY IS NOT A PROVIDER OF MEDICAL OR HEALTH CARE SERVICES AND DOES NOT PRACTICE MEDICINE, OR GIVE MEDICAL ADVICE. THE SERVICES OFFERED BY COMPANY, INCLUDING INFORMATION YOU PROVIDE TO COMPANY, ARE FOR INFORMATIONAL PURPOSES ONLY. SHOULD YOU HAVE ANY HEALTH-RELATED QUESTIONS OR CONCERNS ABOUT YOUR HEALTH OR MEDICAL STATUS, PLEASE CALL OR SEE YOUR PHYSICIAN OR OTHER HEALTHCARE PROVIDER PROMPTLY. Never disregard professional medical advice or delay in seeking it because of anything you have read on this Website. If you think you have a medical emergency, you should call your doctor or 911 immediately.

THE TRANSMISSION AND RECEIPT OF INFORMATION CONTAINED ON THIS SITE, IN WHOLE OR IN PART, OR COMMUNICATION VIA THE INTERNET OR E-MAIL DOES NOT CONSTITUTE OR CREATE A DOCTOR-PATIENT, OR OTHER HEALTHCARE PROFESSIONAL RELATIONSHIP BETWEEN YOU AND COMPANY. YOU UNDERSTAND AND AGREE THAT COMPANY DOES NOT EDIT THE CONTENTS OF YOUR INFORMATION OR RENDER ANY OPINION OR JUDGMENT REGARDING YOUR MEDICAL HEALTH OR PHYSICIANS' CARE. COMPANY IS NOT SUBJECT TO THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT ("HIPAA") WHICH REGULATES HOW HEALTH CARE PROVIDERS AND OTHER COVERED ENTITIES MUST HANDLE AND PROTECT HEALTHCARE INFORMATION OF THEIR PATIENTS. WHILE COMPANY IS NOT REQUIRED TO COMPLY WITH HIPAA MEDICAL INFORMATION PRIVACY LAWS, COMPANY HAS USED THE HIPAA REGULATIONS AS A GUIDELINE FOR ITS OWN POLICIES AND PROCEDURES WITH RESPECT TO YOUR PERSONAL INFORMATION.

YOU ACKNOWLEDGE AND AGREE THAT COMPANY IS NOT RESPONSIBLE FOR ANY ADVERSE CONDITIONS OR EVENTS THAT MAY BE CAUSED, IN WHOLE OR IN PART, BY MISCHARACTERIZATION, OR MISFILING OF YOUR PROFILE, RECORDS OR OTHER DATA; COMPANY IS NOT RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPANY RECORDS RESULTING FROM A TECHNICAL FAILURE OR COMPUTER VIRUS.

YOU ACKNOWLEDGE AND AGREE THAT COMPANY IS NOT RESPONSIBLE FOR (i) THE CONTENT OF YOUR STORED RECORDS TO OUR WEBSITE AND/OR SERVICE (SAVED SESSIONS), (ii) THE COMPLETENESS OR ACCURACY OF YOUR STORED RECORDS TO OUR WEBSITE AND/OR SERVICE, (iii) ANY MEDICAL DIAGNOSIS OR DECISION BY YOUR HEALTH CARE PROVIDER THAT IS BASED IN WHOLE OR IN PART ON YOUR STORED RECORDS TO OUR WEBSITE AND/OR SERVICE; (iv) ANY MISSING RECORDS OR OMISSIONS FROM YOUR RECORDS REGARDLESS OF WHETHER THE CONTENT OF THE RECORDS. YOU ACKNOWLEDGE AND AGREE THAT COMPANY IS NOT RESPONSIBLE FOR ANY ADVERSE CONDITIONS OR EVENTS THAT MAY BE CAUSED, IN WHOLE OR IN PART, BY ANY INACCURACIES OR OMISSIONS IN YOUR RECORDS, OR THE UNAVAILABILITY OF YOUR RECORDS.

YOU ACKNOWLEDGE AND AGREE THAT COMPANY IS NOT RESPONSIBLE FOR ANY ADVERSE CONDITION OR EVENT, INCLUDING ANY VIOLATION OF YOUR RIGHTS OF PRIVACY OR MISUSE OR CHANGES TO YOUR RECORDS, THAT MAY BE CAUSED, IN WHOLE OR IN PART, BY YOUR FAILURE TO SAFEGUARD THE CONFIDENTIALITY OF YOUR ACCESS CODES. YOU ACKNOWLEDGE AND AGREE THAT COMPANY IS NOT A PROVIDER OF MEDICAL OR HEALTH CARE SERVICES AND DOES NOT PRACTICE MEDICINE, OR GIVE MEDICAL ADVICE. NO PHYSICIAN/PATIENT OR OTHER HEALTHCARE/PATIENT RELATIONSHIP HAS BEEN ESTABLISHED BETWEEN YOU AND COMPANY. YOU UNDERSTAND AND AGREE THAT COMPANY DOES NOT EDIT THE CONTENTS OF YOUR SESSIONS OR RENDER ANY OPINION OR JUDGMENT REGARDING YOUR MEDICAL HEALTH.

WITHOUT LIMITING ANY OF THE FOREGOING, EVERYTHING AVAILABLE THROUGH COMPANY, WHETHER THROUGH OUR WEBSITE OR BY PHONE, FAX, EMAIL, OR CONVENTIONAL MAIL OR OTHER DELIVERY SERVICES, IS PROVIDED "AS IS" AND "AS AVAILABLE" WITHOUT WARRANTY OF ANY KIND EITHER EXPRESSED OR IMPLIED AS TO THE ACCURACY, COMPLETENESS, CURRENTNESS, RELIABILITY, TIMELINESS, OR FITNESS FOR A PARTICULAR PURPOSE OF ANY INFORMATION COMPANY COLLECTS, STORES, USES, PROVIDES ACCESS TO OR DISTRIBUTES ABOUT YOU.

TO THE EXTENT PERMITTED BY LAW, WE EXPRESSLY DISCLAIM ALL OTHER WARRANTIES, CONDITIONS, RESULTS, GUARANTEES, OR REPRESENTATIONS WITH RESPECT TO OUR SERVICES AND WEBSITE, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, MERCHANTABLE OR SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT OF THIRD PARTY RIGHTS, OR ARISING FROM THE COURSE OF PERFORMANCE, COURSE OF DEALING, OR USAGE OF TRADE. WE DO NOT WARRANT THAT ALL ERRORS, BUGS, OR DEFECTS CAN OR WILL BE CORRECTED OR THAT THE WEBSITE OR SERVICES WILL OPERATE BUG-FREE, ERROR-FREE, CONTINUOUSLY, OR UNINTERRUPTED. NO ORAL OR WRITTEN INFORMATION OR ADVICE THAT WE OR ANY AUTHORIZED REPRESENTATIVE PROVIDES TO YOU SHALL CREATE A WARRANTY. SOME

JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES OR LIMITATIONS ON APPLICABLE STATUTORY RIGHTS OF A CONSUMER, SO THE ABOVE EXCLUSION AND LIMITATION MAY NOT APPLY TO YOU.

### CONSEQUENTIAL DAMAGES

IN NO EVENT SHALL COMPANY OR ITS AFFILIATES, AGENTS OR LICENSORS BE LIABLE TO YOU OR ANYONE ELSE IN CONNECTION WITH THIS AGREEMENT FOR ANY LOSS, INJURY, OR HEALTH PROBLEMS CAUSED IN WHOLE OR PART BY ITS NEGLIGENCE OR CONTINGENCIES BEYOND ITS CONTROL IN PROCURING, COMPILING, INTERPRETING, STORING, ACCESSING, REPORTING, OR DELIVERING INFORMATION. IN NO EVENT WILL COMPANY, ITS AFFILIATES, AGENTS OR LICENSORS BE LIABLE TO YOU OR ANYONE ELSE FOR ANY DECISION MADE OR ACTION TAKEN OR NOT TAKEN BY YOU OR YOUR HEALTHCARE PROVIDERS IN RELIANCE ON SUCH INFORMATION. COMPANY AND ITS AFFILIATES, AGENTS AND LICENSORS SHALL NOT BE LIABLE TO YOU OR ANYONE ELSE FOR ANY DAMAGES INCLUDING ANY SPECIAL, CONSEQUENTIAL, INDIRECT, INCIDENTAL OR RELIANCE DAMAGES (OR ANY LOSS OF REVENUE, PROFITS OR DATA OR COSTS OF COVER), HOWEVER CAUSED, WHETHER FOR BREACH OF CONTRACT OR TORT, (INCLUDING PRODUCTS LIABILITY, STRICT LIABILITY AND NEGLIGENCE), OR UNDER ANY OTHER LEGAL THEORY, WHETHER FORESEEABLE OR NOT AND WHETHER OR NOT COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

### THIRD PARTY CONTENT AND LINKS

You agree that Company is not responsible and will not be held liable for any third party content on this Website or any third-party content, products or services available on another website through a link from this Website. Links to third-party websites are for your convenience only, and their inclusion on this Website does not imply any endorsement, guarantee, warranty or representation by Company.

### INTELLECTUAL PROPERTY

This Website and all materials on the Website, including, without limitation, all text, databases, designs, trademarks, and logos on the Website, are protected by copyrights, trademarks, service marks, patents or other proprietary rights and laws. Except as specifically permitted in this Agreement or by express written consent of Company, you agree that you shall not use the Website or the material on the Website in any manner.

### GENERAL TERMS

This Agreement shall be governed by the laws of the State of California without regard to its conflict of law provisions. Your use of our service may also be subject to other local, state, national, or international laws, and you are solely responsible for knowing and complying with all such laws. With the sole exception of any equitable actions, all disputes arising under this Agreement shall be submitted to binding arbitration in San Jose, California under the Commercial Rules of the American Arbitration Association by one arbitrator mutually agreed upon both you and us in accordance with the aforementioned Rules. Costs of the arbitration, including administrative and arbitrators' fees, shall be shared equally by each of us. The arbitration award shall be final and each of us shall comply in good faith to the entry

of the arbitrator's award in any court having jurisdiction. If judicial enforcement or review of the arbitrator's decision is sought, the prevailing one of us shall be entitled to costs and reasonable attorneys' fees. For the avoidance of doubt, all claims you bring against us must be resolved in accordance with this Section. All claims filed or brought against us contrary to this Section shall be considered improperly filed. Should you file a claim contrary to this Section, you agree that we may recover attorneys' fees and costs of up to One Thousand Dollars (\$1000.00) provided that we have notified you in writing of the improperly filed claim and you have failed to properly withdraw the claim. If any provision of this Agreement is held to be invalid or unenforceable, such provision shall be struck and the remaining provisions shall be enforced. Company's failure to act with respect to a breach does not waive Company's right to act with respect to subsequent or similar breaches. You may not assign or transfer this Agreement or any rights hereunder, and any attempt to the contrary is void. Company shall not be liable for any delay or failure to perform resulting directly or indirectly from any causes beyond Company's reasonable control. You agree that Company may communicate with you via email and any similar technology for purposes relating to your membership or the service and any other services provided or which may in the future be provided by Company or on Company's behalf. This Agreement sets forth the entire understanding and agreement between the parties with respect to the subject matter hereof and supersedes all prior understandings, proposals, agreements, negotiations, and discussions between the parties, whether written or oral.

I HAVE READ AND UNDERSTAND THIS AGREEMENT AND BY CLICKING ON THE "I ACCEPT" BUTTON BELOW, I AGREE TO BE BOUND BY ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT.

## **SweetWater Health, LLC Privacy Policy**

PLEASE READ THIS PRIVACY POLICY CAREFULLY BEFORE USING THIS WEBSITE.

SweetWater Health, LLC (“Company”) is committed to protecting the privacy and security of our customers and visitors to our website at [www.beathealthy.com](http://www.beathealthy.com) (the “Website”). This Privacy Policy states Company’s commitment to maintain each member’s right to the privacy, confidentiality and security of their personal information and any other information he or she may provide to Company through our Website or mobile application, or any other communications with Company.

YOU ACKNOWLEDGE AND AGREE THAT COMPANY IS NOT A HEALTH CARE PROVIDER AND THEREFORE IS NOT SUBJECT TO THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA) WHICH REGULATES HEALTH CARE PROVIDERS. WHILE COMPANY IS NOT REQUIRED TO COMPLY WITH HIPAA, COMPANY HAS USED THE HIPAA REGULATIONS AS A GUIDELINE FOR ITS OWN POLICIES AND PROCEDURES WITH RESPECT TO YOUR PROTECTED HEALTH INFORMATION.

BY YOUR COMPLETION OF THE ELECTRONIC ACCEPTANCE PROCESS AND YOUR CONTINUED USE OF THIS SITE AND MOBILE APPLICATION THEREAFTER, YOU REPRESENT AND WARRANT THAT YOU: (i) ARE AUTHORIZED TO SIGN FOR AND BIND THE CONTRACTING PARTY AND (ii) AGREE TO BE BOUND BY ALL OF THE TERMS AND CONDITIONS OF THIS PRIVACY POLICY. IF YOU ARE NOT AUTHORIZED TO SIGN FOR AND BIND THE CONTRACTING PARTY, OR OTHERWISE DO NOT AGREE WITH THE TERMS AND CONDITIONS OF THIS PRIVACY POLICY, CLICK THE “I DECLINE” BUTTON. COMPANY RESERVES THE RIGHT TO MODIFY THIS PRIVACY POLICY AT ANY TIME AND WILL NOTIFY YOU OF ANY SUCH CHANGES BY EMAIL. PLEASE NOTE THAT THE USE OF PERSONAL INFORMATION THAT WE COLLECT IS SUBJECT TO OUR PRIVACY POLICY THEN IN EFFECT.

### **PERSONAL INFORMATION**

“Personal Information” means any information that may be used to identify an individual, including, but not limited to, a first and last name, the individual’s session information or other information, home or other physical address, an email address, phone number or other contact information, whether at work or at home.

### **SECURITY**

Company has security measures in place to protect the loss, misuse, and alteration of the information stored on the website server system. Firewalls and other industry standard security measures deemed appropriate are in place to prevent unauthorized access to equipment and servers. All systems are continuously monitored for suspicious activity to prevent any breaches in security.

Company employs the highest levels of secure socket layers (SSL) security protocol and digital certificate authentication, standard industry tools used to provide data encryption and source authentication when personal data is collected. SSL encrypts the Personal Information transmitted from a user’s computer to Company and protects the transmission of

personal and financial information over the Internet. Unfortunately, no data transmission over the Internet can be guaranteed to be 100% secure. As a result, while we strive to protect your information, Company cannot ensure or warrant the security of any information you transmit to us, and you do so at your own risk.

#### ACCESS TO SESSIONS/RECORDS

When you subscribe to our services, you will provide your email and a password (together, your "Access Codes"). These Access Codes will be used to identify you when communicating with Company or its agents and to allow online access to your records via our Website. You agree that it is your responsibility to safeguard the confidentiality of your Access Codes both online and offline. You will need your Access Code to view your records and to make any changes to any Personal Information, including, but not limited to, any sessions or other information that you may have provided to Company. It is your responsibility to guard and maintain the security of your Access Codes at all times.

#### COLLECTION OF PERSONAL INFORMATION

Company does not collect your Personal Information unless you voluntarily provide it to us on our Website, through any direct communications with us, or by registering to become a member of Company. Company does not maintain financial information about you such as your credit card or checking account numbers and only uses such information to complete your purchases and transactions. Such financial information may be transferred to a financial partner responsible for the security, approval and completion of the transaction.

We may collect certain anonymous or non-identifiable information about you when you visit or upload your session to our Website or when you answer our questionnaires or surveys. We may share such anonymous or aggregate information with trusted third parties or use such information to shape and direct the creation and maintenance of content on this Website or to improve the service levels of the Website.

We also may use cookies on our Website for performance and reliability. A cookie is a small file stored on the Website user's computer or Web server and is used to aid Web page navigation. A session cookie is a temporary file created whenever a website is accessed and is self-terminated based either on an expiration date (e.g. 3 hours from creation of the cookie) or by closing the Web browser. A persistent cookie is a permanent file and must be deleted manually. Company does not use persistent cookies.

You can set your browser to notify you when you receive a cookie, in order to give you the chance to determine whether or not to accept it. If you do not accept cookies, some pages of this Website may not display properly or you may not be permitted to access certain information.

#### PURPOSES FOR WHICH WE WILL USE PERSONAL INFORMATION

We make every effort to identify the purposes for which we will collect Personal Information at or before the time the information is collected. We will use your Personal Information only for the purposes disclosed at the time of collection or as otherwise set out in this Privacy Policy, unless we have your consent for another use, or unless such other use is authorized or required by law.

Our policy is to collect Personal Information from you for the following purposes:

- (a) to provide services and promote and market our services to you, and to improve those services;
- (b) to maintain a commercial relationship with you and to communicate with you (which may include: providing services, advertising, promotions, and account verification);
- (c) to identify your needs and/or preferences;
- (d) to meet legal and regulatory requirements;
- (e) to administer, maintain, manage, and improve our business operations; and
- (f) as otherwise required by law.

#### SHARING OF PERSONAL INFORMATION

Company may share Personal Information with third party vendors, who we contract with to provide services and information to our members. Company uses commercially reasonable efforts to ensure the contract with such vendors only permits the vendor to use the member data collected in the Company data center or handled by them for purposes authorized by the member. All such vendors must comply with our Privacy Policy.

Company may disclose Personal Information if required to do so by law or in the good faith belief that such action is necessary to: (1) to comply with legal process served on Company or this Website; (2) protect and defend the rights or property of Company; or (3) act in urgent circumstances to protect the personal safety or life of users of Company, its websites or the public. If Company should ever file for bankruptcy or merge with another company, we may transfer the information you provide to us on this Website to our successor entity if such entity intends to continue to provide services similar to those provided by Company.

Except as provided above, we will not share any of your Personal Information to any third party without your permission.

#### ACCESS TO YOUR PERSONAL INFORMATION

You can review, update, delete, or correct your Personal Information on file with us online or in person at any time. To access your Personal Information, we require a written request; unless you login and update your Personal Information yourself directly. Upon receipt of any written request, we will take commercially reasonable steps to provide you with the opportunity to access any such information.

#### EMAIL REQUESTS FOR PERSONAL INFORMATION

We will never initiate a request for Personal Information by email or pop-up window. If you receive a request by email or pop-up window, please do not respond and notify us as set forth below.

If you ever believe that you have been a victim of fraud, please report it to the police and take all available actions to protect yourself. Also, please notify us, so that we can take all possible actions to protect you and the other users of this Website.

## CHILDREN

We are committed to protecting the privacy of children. In furtherance of this commitment we restrict the use of our Website to adults only; however, children over the age of fourteen (14) may be registered by their parent or guardian to use the service, provided that such parent or guardian manage the Personal Information for such child directly. The parent or guardian is responsible for providing supervision to ensure the minor's authentication information is kept secure and the credibility of the health record is maintained. Children under the age of fourteen (14) are not permitted to use this Website.

We do not knowingly or intentionally collect Personal Information from children under the age of thirteen (13).

## CONTACT WITH YOU

We may use your email address to contact you from time to time, in order to send notices required by law, to provide information regarding this Website, or to resolve any complaint or suspicious transactions. We also reserve the right to mail or email information to you about our services, to provide offers to customers, or to send out our newsletter to you. You may at any time choose to unsubscribe (or "opt-out") of any of our mailings, either by adjusting your membership settings or by contacting us at [info@sweetwaterhrv.com](mailto:info@sweetwaterhrv.com)

## THIRD PARTIES

This Website may contain links to other websites for informational purposes. Company is not responsible for the privacy practices of any websites linked from this Website.

## SECURITY CONTACT

Company has an established a security officer to oversee all privacy and security issues. If you have any questions or issues with security or concerns with improperly handled Personal Information, contact our privacy and security officer at:

Email: [security@sweetwaterhrv.com](mailto:security@sweetwaterhrv.com)

If you have any questions about Company's Website practices or your dealings with Company, you can email us at [support@sweetwaterhrv.com](mailto:support@sweetwaterhrv.com).

## EFFECTIVE DATE

This privacy policy was last modified on 4/23/14.



## **Your California Privacy Rights**

If you are a California resident, you have the right to request information from us regarding the manner in which we share certain categories of your personal information with third parties for their own direct marketing uses. California law provides that you have the right to submit a request to us at our email address in order to receive information on the categories of customer information that we shared and the names and addresses of those businesses with which we shared customer information for the immediately prior calendar year. To obtain this information, please send an email message to [support@sweetwaterhrv.com](mailto:support@sweetwaterhrv.com) with “Request for California Privacy Information” in the subject line and in the body of your message. We will provide the requested information to you in your email address in response.

Please be aware that not all information sharing is covered by the “Shine the Light” requirements and only information on covered sharing will be included in our response.