

# Blue Note Terms of Use

Last Updated: OCT 15, 2020

Thank you for choosing our website, [bluenotetherapeutics.com](http://bluenotetherapeutics.com), and digital therapeutic

## Blue Note Terms of Use

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Thank you for choosing our website, [bluenotetherapeutics.com](http://bluenotetherapeutics.com), and digital therapeutic applications, (collectively, our “Services”), brought to you by Blue Note Therapeutics, Inc. (“Blue Note”, “us”, “our” and “we”). Below are our Terms of Use (the “Terms”). We are pleased to answer any questions or concerns you may have at +1 415-200-3697 or [help@bluenotetx.com](mailto:help@bluenotetx.com).

Please note that certain features of our Services may be subject to additional guidelines, terms, or rules, which will be posted on our website or included within the application in connection with such features. All such additional terms, guidelines, and rules are incorporated by reference into these Terms.

Your use of our Services is also subject to our Privacy Policy, which may change from time to time (the policy explains how you can learn about these changes). Our Services are intended for use for use within the United States of America.

Please note that our website, [bluenotetherapeutics.com](http://bluenotetherapeutics.com), is a copyrighted work belonging to Blue Note.

Please do not use our Services if you do not agree to and accept these Terms. By using our Services, you agree to comply with our Terms, as well as the terms permitted by the Apple Media Services Terms and Conditions and/or the Google Play Terms of Service, as applicable to your mobile device.

Our Services and any other Blue Note products and services are not intended to provide health or medical advice. Your use of our Services does not create any patient relationship between you and Blue Note, nor should it be considered a replacement for consultation with a doctor or other healthcare professional. While Blue Note strives to provide helpful and accurate products and services, Blue Note nevertheless makes no endorsement, representation, or warranty of any kind about our Services or any content, information, services, or recommendations provided via our Services.

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### **1. What equipment is necessary to use our Services?**

Full use of our Services, including access to our digital therapeutic applications, is dependent upon your use of a smartphone, tablet, or other computing device with a current operating system, adequate software, storage space, and Internet access. The maintenance and security of your device and software may influence the performance of our Services, and you must ensure your equipment's proper functionality and compatibility with our Services requirements. Some versions of our Services may be compatible only with designated devices, operating systems, internet browsers or settings.

**2. Registration and Account Creation.** In order to use certain features that you have been prescribed by your care provider, you must register for an account through our partner AssistRx (“Account”) and provide certain information about yourself as prompted by the account registration form. You represent and warrant that: (a) all required registration information you submit is truthful and accurate; (b) you will maintain the accuracy of such information. You may delete your Account at any time, for any reason, by following the instructions on the Services.

**3. Account Responsibilities.** You are responsible for maintaining the confidentiality of your Account login information and are fully responsible for all activities that occur under your Account. You agree to immediately notify Blue Note of any unauthorized use, or suspected unauthorized use of your Account or any other breach of security. You are responsible for: (i) the information and data you enter during any registration and during your use of our Services; (ii) any solicited or unsolicited feedback you give us about our Services; (iii) and any other unsolicited information you submit or provide to us, whether or not via our Services (each of (i), (ii), and (iii), together, your “User Content”). Blue Note cannot and will not be liable for any loss or damage arising from your failure to comply with the preceding requirements.

#### **4. License to User Content**

You hereby grant (and you represent and warrant that you have the right to grant) to Blue Note an irrevocable, nonexclusive, royalty-free and fully paid, worldwide license to reproduce, distribute, publicly display and perform, prepare derivative works of, incorporate into other works, and otherwise use and exploit your User Content, and to grant sublicenses of the foregoing rights, solely for the purposes of including your User Content in the Services. You hereby irrevocably waive (and agree to cause to be waived) any claims and assertions of moral rights or attribution with respect to your User Content.

#### **5. License Grant to the Services**

Our Services are licensed, not sold, to you. Your license to our Services is subject to your prior acceptance of these Terms. Your license to our Services is granted by Blue Note, not by Apple or Google (as applicable to your mobile device or computer system). Blue Note reserves all rights not expressly granted to you under these Terms.

a. **Scope of License:** Blue Note hereby grants to you a non-exclusive, revocable, non-transferable, limited license to use our Services as permitted by these Terms for your own personal, noncommercial use. These Terms will govern any content, materials, or services accessible from within our Services, as well as upgrades provided by Blue Note that replace or supplement the original version of our Services, unless such upgrade is accompanied by different terms. Except as provided in these Terms, you may not distribute or make our Services available over a network where they could be used by multiple devices at the same time. You may not transfer, redistribute, or sublicense our Services. You may not copy (except as permitted by these Terms), reverse-engineer, disassemble, attempt to derive the source code of, modify, or create derivative works of our Services, any updates, or any part thereof (except as and only to the extent that any foregoing restriction is prohibited by applicable law or to the extent as may be permitted by the licensing terms governing use of any open-sourced components included with our Services.

b. **Consent to Use of Data:** You agree that Blue Note may collect and use technical data and related information — including but not limited to technical information about your device, system, and application software, and peripherals — that is gathered periodically to facilitate the provision of software updates, product support, and other services to you (if any) related to our Services. Blue Note may use this information, as long as it is in a form that does not personally identify you, to improve its products or to provide services or technologies to you.

**6. Acceptable Use Policy.** The following terms constitute our “Acceptable Use Policy”:

a. You agree not to use the Services to collect, upload, transmit, display, or distribute any User Content (i) that violates any third-party right, including any copyright, trademark, patent, trade secret, moral right, privacy right, right of publicity, or any other intellectual property or proprietary right; (ii) that is unlawful, harassing, abusive, tortious, threatening, harmful, invasive of another’s privacy, vulgar, defamatory, false, intentionally misleading, trade libelous, pornographic, obscene, patently offensive, promotes racism, bigotry, hatred, or physical harm of any kind against any group or individual or is otherwise objectionable; (iii) that is harmful to minors in any way; or (iv) that is in violation of any law, regulation, or obligations or restrictions imposed by any third party.

b. In addition, you agree not to: (i) upload, transmit, or distribute to or through the Services any computer viruses, worms, or any software intended to damage or alter a computer system or data; (ii) send through the Services unsolicited or unauthorized advertising, promotional materials, junk mail, spam, chain letters, pyramid schemes, or any other form of duplicative or unsolicited messages, whether commercial or otherwise; (iii) use the Services to harvest, collect, gather or assemble information or data regarding other users, including e-mail addresses, without their consent; (iv) interfere with, disrupt, or create an undue burden on servers or networks connected to the Services, or violate the regulations, policies or procedures of such networks; (v) attempt to gain unauthorized access to the Services (or to other computer systems or networks connected to or used together with the Services), whether through password mining or any other means; (vi) harass or interfere with any other user’s use and enjoyment of the Services; or (vi) use software or automated agents or scripts to produce multiple accounts on the Services, or to generate automated searches, requests, or queries to (or to strip, scrape, or mine data from) the Services (provided, however, that we conditionally grant to the operators of public search engines revocable permission to use spiders to copy materials from the Services for the sole purpose of and solely to the extent necessary for creating publicly available searchable indices of the materials, but not caches or archives of such materials, subject to the parameters set forth in our robots.txt file).

**7. Enforcement**

We reserve the right (but have no obligation) to review any User Content, and to investigate and/or take appropriate action against you in our sole discretion if you violate the Acceptable Use Policy or any other provision of these Terms or otherwise create liability for us or any other person. Such action may include removing or modifying your User Content, terminating your Account, and/or reporting you to law enforcement authorities.

## **8. Feedback**

If you provide Blue Note with any feedback, ideas or suggestions regarding the Services (“Feedback”), you hereby assign to Blue Note all rights in such Feedback and agree that Blue Note shall have the right to use and fully exploit such Feedback and related information in any manner it deems appropriate. Blue Note will treat any Feedback you provide to Blue Note as non-confidential and non-proprietary. You agree that you will not submit to Blue Note any information or ideas that you consider to be confidential or proprietary.

## **9. What are Blue Note’s rights?**

Blue Note owns, controls, and/or licenses all text, graphics, interfaces, photographs, trademarks, logos, music, audio, works of authorship of any kind, computer code, and information or other materials that are included, posted, generated, provided, or otherwise made available to you through our Services (together, the “Blue Note Content”), including but not limited to the design, structure, selection, coordination, expression, and arrangement of the Blue Note Content. Neither these Terms (nor your access to the Services) transfers to you or any third party any rights, title or interest in or to such intellectual property rights, except for the limited access rights expressly set forth in Section 5. Blue Note and its suppliers reserve all rights not granted in these Terms. There are no implied licenses granted under these Terms.

The Blue Note Content is protected by trade dress, copyright, trademark laws, other intellectual property rights, and other laws of the United States and foreign countries. our Services and no Blue Note Content may be copied, reproduced, republished, uploaded, posted, transmitted, sold, licensed, transferred, adapted, modified, publicly displayed, or distributed without Blue Note’s prior written consent. The license(s) to you set forth below is conditioned on you not modifying the Blue Note Content and on your acceptance of any terms, conditions, and notices accompanying the Blue Note Content or otherwise set forth in our Services. Notwithstanding the foregoing, any materials available for downloading, access, or other use via our Services that have their own license terms, conditions, and notices will be governed by such terms, conditions, and notices.

Blue Note reserves the right to determine the timing and content of software updates for our Services which, if applicable, may be automatically downloaded and installed without prior notice to you.

You acknowledge that Blue Note may establish general practices and limits concerning use of our Services including without limitation the maximum period of time that data or other content will be retained by our Services maximum usage times for our Services and maximum storage space that will be allotted on Blue Note’s servers on your behalf. You agree that Blue Note has no responsibility or liability for the deletion or failure to store any data or other content maintained or uploaded to our Services. To the extent applicable, you acknowledge that Blue Note reserves the right to terminate accounts that are inactive for an extended period of time. You further acknowledge that Blue Note reserves the right to change these general practices and limits at any time, in its sole discretion, with or without notice.

**10. No Support or Maintenance**

You acknowledge and agree that Blue Note will have no obligation to provide you with any support or maintenance in connection with the Services.

**11. Mobile data fees may apply**

You acknowledge that use of our Services may count against your mobile device's data plan. Standard data rates from your wireless provider may apply.

**12. External and Third-Party Services**

Our Services may enable access to Blue Note and/or third-party services and sites (collectively and individually, "External Services"). You agree to use the External Services at your sole risk. Blue Note is not responsible for examining or evaluating the content or accuracy of any third-party External Services, and shall not be liable for any such third-party External Services. Data displayed by our Services or any External Service, including but not limited to financial, medical, and location information, is for general informational purposes only and is not guaranteed by Blue Note or its agents. You will not use the External Services in any manner that is inconsistent with these Terms or that infringes the intellectual property rights of Blue Note or any third party. You agree not to use the External Services to harass, abuse, stalk, threaten, or defame any person or entity, and that Blue Note is not responsible for any such use. External Services may not be available in all languages or in your home country, and may not be appropriate or available for use in any particular location. To the extent you choose to use such External Services, you are solely responsible for compliance with any applicable laws. Blue Note reserves the right to change, suspend, remove, disable, or impose access restrictions or limits on any External Services at any time without notice or liability to you.

**13. Other Users**

Each user of the Services is solely responsible for any and all of its own User Content. Because we do not control User Content, you acknowledge and agree that we are not responsible for any User Content, whether provided by you or by others. We make no guarantees regarding the accuracy, currency, suitability, or quality of any User Content.

**14. Release**

You hereby release and forever discharge the Blue Note (and our officers, employees, agents, successors, and assigns) from, and hereby waive and relinquish, each and every past, present and future dispute, claim, controversy, demand, right, obligation, liability, action and cause of action of every kind and nature (including personal injuries, death, and property damage), that has arisen or arises directly or indirectly out of, or that relates directly or indirectly to, the Services (including any interactions with, or act or omission of, other Services users or any External Services). If you are a California resident, you hereby waive California Civil Code 1542 in connection with the foregoing, which states, "A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party."

**15. No Warranty**

THE SERVICES ARE PROVIDED ON AN "AS-IS" AND "AS AVAILABLE" BASIS, AND BLUE NOTE (AND OUR SUPPLIERS) EXPRESSLY DISCLAIM ANY AND ALL WARRANTIES AND CONDITIONS OF ANY KIND, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING



ALL WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, QUIET ENJOYMENT, ACCURACY, OR NON-INFRINGEMENT. WE (AND OUR SUPPLIERS) MAKE NO WARRANTY THAT THE SERVICES WILL MEET YOUR REQUIREMENTS, WILL BE AVAILABLE ON AN UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE BASIS, OR WILL BE ACCURATE, RELIABLE, FREE OF VIRUSES OR OTHER HARMFUL CODE, COMPLETE, LEGAL, OR SAFE. IF APPLICABLE LAW REQUIRES ANY WARRANTIES WITH RESPECT TO THE SERVICES, ALL SUCH WARRANTIES ARE LIMITED IN DURATION TO NINETY (90) DAYS FROM THE DATE OF FIRST USE.

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO YOU. SOME JURISDICTIONS DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO THE ABOVE LIMITATION MAY NOT APPLY TO YOU.

#### **16. Limitation of Liability**

TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL BLUE NOTE (OR OUR SUPPLIERS) BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY LOST PROFITS, LOST DATA, COSTS OF PROCUREMENT OF SUBSTITUTE PRODUCTS, OR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES ARISING FROM OR RELATING TO THESE TERMS OR YOUR USE OF, OR INABILITY TO USE, THE SERVICES, EVEN IF BLUE NOTE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. ACCESS TO, AND USE OF, THE SERVICES IS AT YOUR OWN DISCRETION AND RISK, AND YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR DEVICE OR COMPUTER SYSTEM, OR LOSS OF DATA RESULTING THEREFROM.

TO THE MAXIMUM EXTENT PERMITTED BY LAW, NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, OUR LIABILITY TO YOU FOR ANY DAMAGES ARISING FROM OR RELATED TO THESE TERMS (FOR ANY CAUSE WHATSOEVER AND REGARDLESS OF THE FORM OF THE ACTION), WILL AT ALL TIMES BE LIMITED TO A MAXIMUM OF FIFTY US DOLLARS (U.S. \$50). THE EXISTENCE OF MORE THAN ONE CLAIM WILL NOT ENLARGE THIS LIMIT. YOU AGREE THAT OUR SUPPLIERS WILL HAVE NO LIABILITY OF ANY KIND ARISING FROM OR RELATING TO THESE TERMS.

SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU.

The foregoing limitations will apply even if the above stated remedy fails of its essential purpose.

Any claim under these Terms must be brought within one year after the cause of action arises, or you agree that such claim or cause of action is barred. The party prevailing in any dispute under these Terms will be entitled to costs and attorneys' fees.

#### **17. Indemnity**

You agree to indemnify and hold Blue Note, its existing and future officers, directors, shareholders, predecessors, successors in interest, employees, agents, subsidiaries, and affiliates harmless from any demands, loss, liability, claims, or expenses (including attorneys' fees) made against Blue Note due to or arising out of or in connection with your



use of our Services or your User Content, as applicable, or your breach of any warranties made by you hereunder or your violation of any other provision of these Terms. Blue Note reserves the right to assume control of the defense of any third-party claim that is subject to indemnification by you, in which event you agree to reasonably cooperate with Blue Note in asserting any available defenses.

## **18. Export**

You may not use or otherwise export or re-export our Services except as authorized by United States law and the laws of the jurisdiction in which our Services was obtained. In particular, but without limitation, our Services 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 Specially Designated Nationals List or the U.S. Department of Commerce Denied Persons List or Entity List. By using our Services 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 these products for any purposes prohibited by United States law.

## **19. Commercial Items**

Our Services and related documentation are "Commercial Items", as that term is defined at 48 C.F.R. §2.101, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation", as such terms are used in 48 C.F.R. §12.212 or 48 C.F.R. §227.7202, as applicable. Consistent with 48 C.F.R. §12.212 or 48 C.F.R. §227.7202-1 through 227.7202-4, as applicable, the Commercial Computer Software and Commercial Computer Software Documentation are being licensed to U.S. Government end users (a) only as Commercial Items and (b) with only those rights as are granted to all other end users pursuant to the terms and conditions herein. Unpublished-rights reserved under the copyright laws of the United States.

## **20. Governing Law and Dispute Resolution**

Except to the extent expressly provided in this paragraph, these Terms and the relationship between you and Apple (if you use our Services on an Apple device) shall be governed by the laws of the State of California, excluding its conflicts of law provisions. You and Apple (if you use our Services on an Apple device) agree to submit to the personal and exclusive jurisdiction of the courts located within the county of Santa Clara, California, to resolve any dispute or claim arising from these Terms and relating to our Services.

Specifically excluded from application to these Terms is that law known as the United Nations Convention on the International Sale of Goods.

## **21. Term and Termination**

Subject to this Section, these Terms will remain in full force and effect while you use the Services. We may suspend or terminate your rights to use the Services (including your Account) at any time for any reason at our sole discretion, including for any use of the Services in violation of these Terms. Upon termination of your rights under these Terms, your Account and right to access and use the Services will terminate immediately. You understand that any termination of your Account may involve deletion of your User Content associated with your Account from our live databases. Blue Note will not have any liability whatsoever to you for any termination of your rights under these Terms, including for termination of your Account or deletion of your User Content. Even after your rights under

these Terms are terminated, the following provisions of these Terms will remain in effect: Sections 4, 7-9 and 12-25.

## **22. International issues**

Blue Note administers and operates our Services from our locations in the United States. Our Services are only available for use within the United States of America. Information available via our Services may contain references to Blue Note products, programs, and services that are not available in your country. Such reference does not imply that Blue Note intends to make such products, programs, or services available in your country. Any offer on our Services for any feature, product, or service is void where prohibited. If you choose to access our Services from outside the United States, you are responsible for complying with applicable local laws. Certain text in our Services may be available in languages other than English; any such translations are provided as a convenience, and Blue Note makes no representations or commitments regarding the accuracy or completeness of any such translation.

## **23. General terms**

If a court or other tribunal of competent jurisdiction holds any of the provisions of these Terms to be void or unenforceable, such provisions shall be limited or eliminated to the minimum extent necessary and replaced with a valid provision that best embodies the intent of these Terms, so that these Terms shall remain in full force and effect.

These Terms and our Privacy Policy for our Services constitute the entire agreement between you and Blue Note with regard to your use of our Services and any and all other written or oral agreements or understandings previously existing between you and Blue Note with respect to such use are hereby superseded and cancelled.

Blue Note's failure to insist on or enforce strict performance of these Terms shall not be construed as Blue Note's waiver of any provision or any right it has to enforce these Terms, nor shall any course of conduct between Blue Note and you or any other party be deemed to modify any provision of these Terms. These Terms shall not be interpreted or construed to confer any rights or remedies on any third parties. Blue Note customer service representatives are not authorized to modify any provision of these terms, either verbally or in writing.

You may not assign or transfer these Terms, by operation of law or otherwise, without Blue Note's prior written consent. Any attempt by you to assign or transfer these Terms, without such consent, will be null and void. Blue Note may freely assign or transfer these Terms without restriction. Subject to the foregoing, these Terms will bind and inure to the benefit of the parties, their successors, and their permitted assigns.

## **24. What if Blue Note changes these Terms?**

If we materially change these Terms, we will notify you by posting a notice on our Services. Your continued use of our Services following any notification of changes to these Terms will mean that you accept and agree to the revised Terms.

## **25. Contact Information**

Address:



Blue Note Therapeutics  
Attn: Terms of Use  
548 Market St #55709  
San Francisco, California  
94104-5401 US  
Phone:+1 415-200-3697  
Email: [help@bluenotetx.com](mailto:help@bluenotetx.com)

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