

# TERMS AND CONDITIONS OF USE

Welcome to [www.modullahealth.com](http://www.modullahealth.com) and the **Target 50™ Clinical Portal** (collectively, the **Site**), operated by Modulla Health, LLC (**MH**). The Site or any products or services offered on the Site are provided by **MH**, conditional on your acceptance of the terms and conditions of use set out below (referred to as the **Terms and Conditions of Use** or the **Agreement**).

**MH** reserves the right to modify or amend the Terms and Conditions of Use without notice at any time. Any changes will be posted at the Terms and Conditions of Use section of the Site and any such changes will become binding and effective on the date the changes are posted. As such, it is important you read the Terms and Conditions of Use on a regular basis so you are aware of any such changes.

**IMPORTANT – READ BEFORE ACCESSING OR USING THE SITE OR ANY SERVICES, SOFTWARE, RESOURCES, PROGRAMS, QUESTIONNAIRES, TOOLS, APPLICATIONS, FEATURES OR FUNCTIONALITY AVAILABLE ON OR THROUGH THE SITE (COLLECTIVELY THE “SERVICES”).**

BY SELECTING THE “I ACCEPT” BUTTON BELOW, OR BY ACCESSING OR USING THE SITE OR SERVICES, YOU ACKNOWLEDGES HAVING READ AND UNDERSTOOD THESE TERMS AND CONDITIONS OF USE AND AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT AND YOU AFFIRM THAT YOU ARE OVER THE AGE OF 18, AS THE SITE IS NOT INTENDED FOR CHILDREN. IF YOU SELECT “I DO NOT ACCEPT”, YOU AGREE THAT SERVICES WILL NOT BE PROVIDED AND YOU WILL NOT ATTEMPT TO ACCESS OR USE THE SITE OR SERVICES.

THIS SITE AND THE SERVICES ARE FOR CONSUMER EDUCATION USE ONLY. NOTHING CONTAINED IN THIS SITE IS OR SHOULD BE CONSIDERED, OR USED AS A SUBSTITUTE FOR, MEDICAL ADVICE, DIAGNOSIS OR TREATMENT. WE ADVISE USERS TO ALWAYS CONSULT AND SEEK THE ADVICE OF A PHYSICIAN OR OTHER QUALIFIED HEALTH CARE PROVIDER WITH ANY QUESTIONS REGARDING HEALTH OR MEDICAL CONDITIONS, AND TO ASCERTAIN THAT YOU ARE MEDICALLY ABLE TO USE THE SERVICES AS THERE MAY BE CERTAIN INHERENT OR POTENTIAL RISKS TO USE THE SITE AND THE SERVICES. USE OF THE SITE AND THE SERVICES MAY INTERACT, AGGRAVATE OR WORSEN HEALTH CONDITIONS OR MAY CAUSE SERIOUS SIDE EFFECTS THAT **MH** CANNOT PREDICT.

## **1 THE SITE DOES NOT PROVIDE MEDICAL ADVICE**

The contents of the Site, including but not limited to any reports generated from use of the Services and any other information, data, analyses, editorial content, graphics, images, audio and video clips, associated blogs, e-mail subscriptions, e-books, recipes, recipe cards, hyperlinks and references, including interactive features such as member forums, live feeds, or conference calls (collectively, the **Content**), are for informational purposes only and are not intended to substitute for professional medical advice, diagnosis, or treatment. You should seek the advice of a

physician, other qualified health provider, if you have questions regarding any medical condition or if you are experiencing any symptoms of or believe you may have a medical or psychiatric condition, regardless of any information contained within the Content, or request a **private nutrition consultation session** with **MH** with whom you may establish such a relationship. You should not ignore professional medical advice or delay in seeking it because of any Content. Furthermore, you should not interpret any single report or any single Content as recommending any specific treatment plan, product or course of action. You should always consult your physician or other qualified health provider before starting any new treatment or stopping any treatment prescribed by your physician or other qualified health provider.

Information on the Site is not intended to replace medical advice from a health professional and **MH** does not accept any liability for any error or omission, injury, expense, loss or damage incurred by you or another party as a result of you using or relying on the Content or any other information contained on the Site or any linked website. All users are urged to seek advice from a qualified health care professional for diagnosis and answers to their medical questions or may request a **private nutrition consultation session** with **MH** with whom they may establish such a relationship.

**PLEASE CALL YOUR DOCTOR OR 911 IMMEDIATELY IF YOU THINK YOU MAY HAVE A MEDICAL OR PSYCHIATRIC EMERGENCY.**

## **2 PRIVACY**

**MH** respects the privacy and confidentiality of your personal information. **MH** does not collect your personal information, except where you provide such information in the course of using the Site. By submitting personal information to **MH**, you acknowledge and agree that you have consented to the collection, use and disclosure of that personal information as specified on any collection form. The general policies of **MH** with respect to the collection, use and disclosure of personal information are reflected in **MH**'s privacy policy, found at <https://modullahealth.com/privacy-notice> (the Privacy Policy) and any questions in that regard may be directed to **MH**'s attention as identified in the Privacy Policy. Should **MH** change its Privacy Policy, the revised policy will be posted prominently on the Site, or it will be otherwise brought to your attention.

Your personal information may be transferred, processed and retained on servers in countries outside of the United States and may therefore be subject to laws that do not offer the same degree of protection as your country of residence. While we undertake to protect your personal information when it is transferred to other jurisdictions, the laws of other jurisdictions may require the disclosure of your personal information to governmental authorities under circumstances that are different than those that apply to your country of residence and are contemplated under the Privacy Policy.

## **3 LINKS TO OTHER WEBSITES AND SOCIAL MEDIA**

Links to third party websites may be provided on the Site. **MH** has not reviewed all linked third party sites. We do not control and are not responsible for any of these websites and their content.

**MH** does not endorse nor make any representations about such sites or any information or material found there or any results that may be obtained from using them. Since we do not control these websites, we assume no responsibility for the privacy practices of such websites. We encourage you to review the privacy policies and terms of use posted on those, and all, third party websites.

You further acknowledge and agree that **MH** shall not be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with use of or reliance on any such content, goods or services available on or through any such third party websites or services. Your use of such sites and resources will not be governed by these terms.

#### **4 PROPRIETARY RIGHTS**

All works and material on the Site, including without limitation, the Content, code and software (the **Materials**) and all organization and presentation of the Materials which form a part of the Site, are the exclusive property of **MH** or its licensors, and are protected by intellectual property laws relating to copyrights, trademarks, trade names, Internet domain names, trade dress and other proprietary rights. Nothing on the Site will be construed as providing, by implication, estoppel or otherwise any license to any proprietary or intellectual property rights in or to any of the Materials to you or any other party. The trademarks, service marks, logos, slogans and Internet domain names on the Site are the exclusive property of **MH** or its licensors. Use of any such property, except as expressly authorized, will constitute a violation of the rights of the owner of the property and a breach of the Terms and Conditions of Use.

You may not, directly or indirectly, decompile or reverse engineer the Site or do anything to attempt to reveal, generate or obtain the source code for the Site.

You may not copy, publish, store, retain, publicly display, transmit, scan, reformat, modify, edit, frame, translate, except, adapt, distribute, create derivative works from, download, grant under license, or in any other way exploit, the Site, in whole or in part, without the express written consent of **MH**.

While you retain ownership of your User Submissions to the Site you may not in any way commercially exploit your User Submissions in connection with the Site.

**MH** may change, add to or delete from the Site or any Services at any time without notice. You bear all risks, costs and damages that you may incur or suffer as a result of those changes.

#### **5 MEMBER SERVICES**

Certain Services, Content and features, and Public Areas (defined below) of the Site are only available to users who purchase a membership (**Member Services**). The Member Services are not intended to be used by any person under the age of eighteen (18) years old. By registering as a member for the Member Services, you agree as follows:

- a. when you register for the Member Services you agree to provide accurate and complete personal information and other information necessary for registration. **MH** relies on this information to provide the Content and Member Services. **MH** also relies on this information to ensure its Services are compliant under law, and thus cannot be liable for any criminal or civil actions against you that may result from you providing false information;
- b. once you have registered, you will have a **MH** membership program which will grant permission to access the Member Services, and such access shall be subject to the Terms and Conditions of Use at all times. You may continue to access the Member Services for as long as the Site and Member Services are made available by **MH**, provided you continuously comply with the Terms and Conditions of Use. **MH** has the right, at any time, to place certain limits on your account;
- c. once you have registered for the Member Services, you hereby consent to receive periodic email communications from **MH**, which may include new product and service offers and other Site information (**Member Emails**). You may choose to opt out of Member Emails; however, **MH** reserves the right to contact you via email at any time with respect to your **MH** membership program and your use of the Member Services;
- d. payment for the Member Services will be charged on the date you register for the Member Services, or, if applicable, on a recurring frequency, or on the date your free trial period ends. You agree to pay, using a valid credit card, PayPal, or other form of payment that **MH** may accept from time to time, the charges and fees set forth on the Site, applicable taxes, and other charges and fees incurred in order to access the Member Services. The charges and fees on the Site are expressed in US dollars and your credit card or other account will be charged in US dollars. You acknowledge and agree that you will not receive a bill in the mail for your membership to the Member Services. All fees are non-refundable. If your Member Services are terminated and then reinstated, you may be required to pay any new charges and fees set forth on the Site, including but not limited to registration fees. **MH** reserves the right to increase charges and fees, or to institute new charges or fees at any time, upon reasonable advance notice communicated to you through a posting on the Site or such other means as **MH** may deem appropriate from time to time (including Member Emails or conventional mail);
- e. in the event **MH** cannot process your payment, **MH** reserves the right to terminate your access to the Member Services and your **MH** membership program;
- f. in addition to the fees and charges set forth above, you are responsible for all charges and fees associated with connecting to the Site and the Member Services, including without limitation all telephone access lines (including long-distance charges, when applicable), internet service provider fees, telephone and computer equipment, sales taxes and any other fees and charges necessary to access the Site and the Member Services; and
- g. For purposes of your use of the Member Services including identification and billing, you agree to provide **MH** with true, accurate and complete information as required by the membership or sign up process to Member Services (**Account Data**), including your legal name, address, telephone number, email address and applicable billing information (e.g., credit card number and expiration date), and to allow **MH** to share your Account Data with third parties for the purpose of verifying the information you provide and billing your credit card or otherwise charging your account. You agree to maintain and promptly update the Account Data to keep it accurate. Without limiting any other provision of the

Terms and Conditions of Use, if you provide any information that is untrue, inaccurate, or incomplete, or **MH** has reasonable grounds to suspect that such is the case, **MH** reserves the right to suspend or terminate your membership or subscription and refuse any and all current or future use by you of the Site (or any portion thereof) or any of the Member Services. You are obligated to check the Site to determine whether your Account Data is current and accurate, and, if not, to correct or update your Account Data including your billing information. You agree to promptly notify **MH** of any changes to your credit card or other billing information while any subscriptions remain outstanding.

**MH** has engaged third party online payment processing providers (including Stripe, Inc. and PayPal, together, the **Payment Providers**) for online payment processing related to the Site and Member Services. The Payment Providers collect the data and personal information you submit when making a payment on this Site, such as payment for your **MH** membership program. The Payment Providers retain ownership over this information and data. By submitting your personal information on the Site, or through the linked sites of the Payment Providers, you consent to such transfer and storage. Please review the Stripe privacy policy available at <https://stripe.com/us/privacy/> and the PayPal privacy policy <https://www.paypal.com/en/webapps/mpp/ua/privacy-full> for more information about how each Payment Provider collects, uses, and discloses personal information. **MH** is not responsible, and shall not be liable, directly or indirectly, for any damage or loss suffered by you which is caused or alleged to be caused by or in connection with either Stripe's or PayPal's respective privacy policies, any content on their websites, or how either Payment Provider collects, uses, or discloses personal information and data.

## **6 BREACH OF CONTRACT**

**MH** can disable your **MH** membership program or any other Site membership or account, and take all further action against you it deems appropriate in its sole discretion if, in the opinion of **MH**:

- a. you have violated the terms of this Agreement;
- b. you have Misused the Site, as defined below, even if you are unaware of this Misuse; or
- c. a public authority requests we disable your **MH** membership program or any other Site membership or account.

## **7 SECURITY AND PASSWORDS**

You are responsible for maintaining the security and confidentiality of your **MH** membership program or any other Site membership or account and password details, providing **MH** with current and accurate account information, and all activity associated with your **MH** membership program or any other Site membership or account. If you access the Site from a mobile device, you are responsible for maintaining the security of your mobile device. You agree not to share your username or password with others and to choose a password that cannot be easily guessed by others. **MH** is not responsible for any consequences that may result from you sharing your username or password. If **MH** has reason to believe the security of your **MH** membership program or any other Site membership or account has been compromised it retains the right to:

- a. ask you to change your password; and/or
- b. disable access to your **MH** membership program or any other Site membership or account. If this should occur, you will be alerted by a member email.

You must inform **MH** immediately if you have reason to believe your password has become known to others, or if the security of your username or password has become compromised in any way.

**EACH USER ACKNOWLEDGES AND AGREES THAT (i) NEITHER MH NOR ANY OF ITS AFFILIATES WILL HAVE ANY LIABILITY TO ANY USER FOR ANY UNAUTHORIZED ACTIONS MADE USING ANY USER'S ID OR PASSWORD; AND (ii) THE UNAUTHORIZED USE OF YOUR USERNAME AND PASSWORD FOR YOUR MH MEMBERSHIP PROGRAM OR ANY OTHER SITE MEMBERSHIP OR ACCOUNT OR YOUR EMAIL ADDRESS COULD CAUSE YOU TO INCUR LIABILITY TO BOTH MH AND OTHER USERS.**

## **8 MEMBERSHIP MODIFICATION AND CANCELLATION**

You acknowledge and agree that your only right with respect to any dissatisfaction with the Site, Member Services, or any modification or discontinuation of the foregoing, or any policies or practices by **MH** in providing this Site or Member Services, including without limitation any changes to the Membership Services, is to cancel or terminate your membership and registered **MH** membership program or any other Site membership or account. You can cancel your **MH** membership program or any other Site membership or account by contacting **MH** through the Site or by such other means as we may provide from time to time.

## **9 PRODUCT REFUND**

You agree that digital products for which access is purchased or which are downloadable are not eligible for exchange or refund, unless otherwise expressly stated in the product's description on the Site. The refund policy for all other products is as described in the product description on the Site.

## **10 USER SUBMISSIONS**

**MH** allows you to participate in, and to contribute to message boards, bulletin boards, recipe swaps, comment entries, guest posts, forums, testimonials, user reviews or similar activity (referred to as **Public Areas**) by posting or uploading content and information to the Site or e-mailing or otherwise submitting content to **MH** (collectively, a **User Submission**).

The personal information you submit to **MH** is governed by the Privacy Policy. You agree that you will not upload or transmit any communications or content of any type to the Site Public Areas that infringe or violate any rights of any party. By submitting a User Submission to Public Areas, you agree that such submission(s) are non-confidential for all purposes and **MH** will not be subject to any obligation of confidence in respect to a User Submission.

If you make any User Submission, you agree that you will not send or transmit to **MH** by email, (including through the email addresses listed on the Contact Us page) any communication or content that infringes or violates any rights of any party or this Agreement. If you submit any business information, idea, concept or invention to **MH** by email, you agree such submission is non-confidential for all purposes.

If you make any User Submissions to Public Areas or if you submit any business information, idea, concept or invention to **MH** by email, you automatically grant-or warrant that the owner of such content or intellectual property has expressly granted **MH** a royalty-free, perpetual, irrevocable, world-wide nonexclusive license to use, reproduce, create derivative works from, modify, publish, edit, translate, distribute, perform, and display the communication or content in any media or medium, or any form, format, or forum now known or hereafter developed. **MH** may sublicense its rights through multiple tiers of sublicenses. If you wish to keep any business information, ideas, concepts or inventions private or proprietary, do not submit them to Public Areas or to **MH** by email. You warrant that, to the extent you are not the exclusive holder of any intellectual property right in a User Submission, you have obtained all consents and licenses required to submit the User Submission to the Site.

Further, you hereby agree and acknowledge that by providing a User Submission you may be giving up certain proprietary rights, including the right to apply for a patent and the right to receive any economic benefit from your suggestion or comment. If you are not prepared to grant the foregoing license and give up these rights or if you do not understand the consequences of providing a User Submission then you should not provide the same to **MH**.

## **11 INDEMNIFICATION**

You further agree to indemnify **MH** and its affiliates, directors, officers and employees, and other users of the Site, and hold each of them harmless from any and all claims and expenses, including legal counsel fees, arising as a result of any User Submission that you submit.

## **12 USER SUBMISSIONS — IMAGE, VIDEO, AUDIO FILES**

You agree to only post or upload media including but not limited to photos, videos and audio that you have taken yourself or that you have all rights to transmit and license and which do not violate trademark, copyright, privacy or any other rights of any other person. To protect your privacy, you agree that you will not submit any media that contains personal information which may include the name, phone number, email address or web site URL of you or of anyone else. Uploading media like images or videos of other people without their permission is strictly prohibited. By uploading any media on the Site, you warrant that you have permission from all persons appearing in your media for you to make this contribution and grant rights described herein. Never post a picture or video of or with someone else unless you have their explicit permission.

It is strictly prohibited to upload media of any kind that contain expressions of hate, abuse, offensive images or conduct, obscenity, pornography, sexually explicit or any material that could give rise to any civil or criminal liability under applicable law or regulations or that otherwise

may be in conflict with the Terms and Conditions of Use and the Privacy Policy. You agree that you will not upload any material that contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or this Site.

By uploading any media you: (i) grant to **MH** a perpetual, non-exclusive, worldwide, royalty-free license to use, copy, print, display, reproduce, modify, publish, post, transmit and distribute the media and any material included in the media; (ii) certify that any person pictured in the submitted media (or, if a minor, his/her parent/legal guardian) authorizes **MH** to use, copy, print, display, reproduce, modify, publish, post, transmit and distribute the media and any material included in such media; and (c) agree to indemnify **MH** and its affiliates, directors, officers and employees and hold them harmless from any and all claims and expenses, including legal counsel fees, arising from the media and/or your failure to comply with the Terms and Conditions of Use.

**MH** reserves the right to review all media prior to submission to the Site and to remove any media for any reason, at any time, without prior notice, in their sole discretion.

### **13 PUBLIC AREAS**

If you use Public Areas, you are solely responsible for your own communications, the consequences of posting those communications, and your reliance on any communications found in Public Areas. **MH** is not responsible for the consequences of any communications in Public Areas. **MH** has no duty to pre-screen content posted on the Site by you or other users. In cases where you feel threatened or believe someone else is in danger, you should contact your local law enforcement agency immediately. If you think you may have a medical emergency, call your doctor or 911 immediately.

In consideration of access to use Public Areas, you agree that the following actions shall constitute a material breach of the Terms and Conditions of Use:

- a. using Public Areas for any purpose in violation of local, provincial, state, national, or international laws;
- b. posting material that infringes the intellectual property rights of others or the privacy or publicity rights of others;
- c. posting material that is unlawful, obscene, defamatory, threatening, harassing, abusive, slanderous, hateful, or embarrassing to any other person or entity as determined by **MH** in its sole discretion;
- d. posting advertisements or solicitations of business;
- e. promoting or publicizing promotional contests;
- f. importing, exporting, selling or offering to sell, directly or indirectly, any regulated item or information in breach of any embargo, trade sanction, import or export control law that may be imposed by the government in any country;
- g. disrupting the normal flow of dialogue, or posting comments that are not related to the topic being discussed;
- h. posting chain letters or pyramid schemes;



- i. impersonating another person;
- j. distributing viruses or other harmful computer code;
- k. obtaining or seeking to obtain access to any software or data of **MH** or any of its suppliers other than as specifically permitted and as reasonably necessary to use the Site;
- l. using any automatic means, including software, to interfere with or attempt to interfere with the Site or any related services or their use by any other user;
- m. causing any unreasonable burden or load on the Site or its computer systems;
- n. undertaking any activity which creates loss or damage or potentially creates loss or damage to **MH**'s computer systems;
- o. harvesting or otherwise collecting information about others, including email addresses, without their identification for posting or viewing comments;
- p. allowing any other person or entity to use your identification for posting or viewing comments;
- q. posting the same note more than once or "spamming"; or

## **14 MONITORING PUBLIC AREAS**

**MH** reserves the right but is not obligated to do any or all of the following:

- a. record the dialogue in Public Areas;
- b. investigate an allegation that a communication does not conform to the terms of this section and determine in its sole discretion to remove or request the removal of the communication(s);
- c. remove communications which are abusive, illegal, or disruptive, or that otherwise fail to conform with the Terms and Conditions of Use;
- d. terminate a user or member's access to any or all Public Areas and/or the Site upon **MH**'s reasonable belief that such user or member is in breach of the Terms and Conditions of Use;
- e. monitor, edit, or disclose any communication in Public Areas; and/or
- f. edit or delete any communication(s) posted on the Site, regardless of whether such communication(s) violate the Terms and Conditions of Use.

**MH** shall have no liability or responsibility to users or members of the Site and Services or any other person or entity for performance or non-performance of the aforementioned activities.

## **15 PUBLIC AREA DISCLAIMER**

The opinions expressed by those providing comments in any Public Areas do not necessarily reflect the opinions of **MH**. The Public Areas comment sections are not intended as, and is not, a substitute for professional medical advice. All decisions about clinical care should be made in consultation with your treating physician.

When participating in Public Areas, never assume that people are who they say they are, know what they say they know, or are affiliated with whom they say they are affiliated. **MH** is not responsible for the content or accuracy of any information, and will not be responsible for any reliance or decisions made based on such information. When using Public Areas, you may not

post, transmit, link to, or otherwise distribute any information, materials or content that do not generally pertain to the designated topic or theme of the particular Public Area. Use of Public Areas for commercial purposes of any kind is strictly prohibited. **MH** reserves the right to refuse to post or to remove any information or materials, in whole or in part, that, in its sole discretion, are unacceptable, undesirable, or in violation of the Terms and Conditions of Use.

**MH DOES NOT MONITOR, CONTROL, OR SCREEN ANY INFORMATION, MATERIALS, OR CONTENT POSTED BY USERS IN PUBLIC AREAS FOR THE PURPOSE OF PROTECTING PERSONAL INFORMATION. USE CAUTION WHEN PROVIDING ANY PERSONAL INFORMATION IN THE PUBLIC AREAS. ANY PERSONAL INFORMATION YOU SHARE IN PUBLIC AREAS ARE NOT PRIVATE COMMUNICATIONS AND MAY BE READ BY ANY OTHER USER WITHOUT YOUR KNOWLEDGE. MH HAS NO RESPONSIBILITY TO PROTECT ANY PERSONAL INFORMATION YOU SHARE IN PUBLIC AREAS AND MH SHALL NOT BE LIABLE, DIRECTLY OR INDIRECTLY, FOR ANY DAMAGE OR LOSS SUFFERED BY YOU WHICH IS CAUSED OR ALLEGED TO BE CAUSED BY OR IN CONNECTION WITH SHARING PERSONAL INFORMATION IN PUBLIC AREAS.**

## **16 COOKIES AND WEB BEACONS**

To enhance your experience with the Site, **MH** reserves the right to use “cookies”. Cookies are text files placed in your computer’s browser to store your preferences. Cookies, by themselves, do not tell **MH** your email address or other personal information unless you choose to provide this information to **MH**. However, once you choose to furnish the Site with personal information, this information may be linked to the data stored in the cookie.

**MH** uses cookies to understand Site usage and to improve the content and offerings on the Site. For example, **MH** may use cookies to personalize your experience at the Site (e.g., to recognize you by name when you return to the Site), or save your password in password-protected areas. **MH** also may use cookies to offer you products, programs, or services.

“Web beacons” or clear .gifs are small pieces of code placed on a web page to monitor the behavior and collect data about the visitors viewing a web page. For example, web beacons can be used to count the users who visit a web page or to deliver a cookie to the browser of a visitor viewing that page. **MH** may use web beacons on the Site from time to time for this and other purposes.

## **17 MISUSE**

In consideration of the availability, and your use of, the Site and Member Services, you agree to comply with all applicable laws and the Terms and Conditions of Use when using the Site and Member Services. You also agree that neither you, nor any person influenced by you, or any person acting under your direction, will:

- a. use the Site or Member Services in such a way that violates applicable laws, license agreements, copyright, or other intellectual property rights;

- b. post, transmit, link to, or otherwise distribute any materials, information, or content constituting, advocating or encouraging conduct that would constitute a criminal offence or give rise to civil liability, or otherwise use the Site or Member Services in a manner which is contrary to law or would serve to restrict or inhibit any other use from using or enjoying the Site or Member Services, or the Internet;
- c. post, transmit, link to, or otherwise distribute any inappropriate, profane, defamatory, infringing, obscene, indecent or unlawful material or information; or
- d. use the Site or Member Services to commit illegal acts, “hack” the Site, or modify or interfere with the Site or Member Services in any way; or
- e. do any act which is considered to be a material breach of the Terms and Conditions of Use as set forth in Section 12 herein.

Any of the above actions will constitute **Misuse**.

Any acts you commit, or cause to be committed, which, in the sole opinion of **MH**, intentionally expose the Site or Member Services to cyber threats such as viruses or hacking, increase the likelihood of a security breach, or cause or may cause any reputational harm to **MH** will also constitute Misuse. **MH** retains the right to take steps to identify and prevent Misuse of the Site or Member Services.

## **18 USER LIABILITY**

You will be liable for any damage resulting from the following:

- a. your Misuse of the Site;
- b. your use of the Site or Member Services when it was the basis for someone taking legal action against **MH** for violations of applicable laws, license agreements, copyright or other intellectual property rights; or
- c. your use of the Site or Member Services resulted in others being unable to use the Site or Member Services properly, resulting in legal action against **MH**.

## **19 MH LIMITATION OF LIABILITY**

**THE USE OF THE SITE, MEMBER SERVICES AND THE CONTENT IS AT YOUR OWN RISK.**

When using the Site, information will be transmitted over a medium that may be beyond the control and jurisdiction of **MH**. Accordingly, **MH** assumes no liability for or relating to the delay, failure, interruption, or corruption of any data or other information transmitted in connection with use of the Site.

The Site, Services and the Content are provided on an “as is” basis. **MH, ITS LICENSORS, AND ITS SUPPLIERS, TO THE FULLEST EXTENT PERMITTED BY LAW, DISCLAIM ALL WARRANTIES AND CONDITIONS EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY, NON-INFRINGEMENT OF THIRD PARTIES’**

RIGHTS AND FITNESS FOR PARTICULAR PURPOSE. WITHOUT LIMITING THE FOREGOING, **MH**, ITS LICENSORS, AND ITS SUPPLIERS MAKE NO REPRESENTATIONS OR WARRANTIES THAT THE SITE, SERVICES OR CONTENT WILL MEET YOUR NEEDS, OR ABOUT THE ACCURACY, RELIABILITY, COMPLETENESS, CORRECTNESS OR TIMELINESS OF THE SERVICES AND CONTENT, SOFTWARE, TEXT, GRAPHICS, LINKS OR COMMUNICATIONS PROVIDED ON OR THROUGH THE USE OF THE SITE. **MH** DOES NOT WARRANT THAT THE SITE, SERVICES OR CONTENT ARE ACCURATE, RELIABLE OR CORRECT, THAT THE SITE WILL BE AVAILABLE AT ANY PARTICULAR TIME OR LOCATION, THAT ANY DEFECTS OR ERRORS WILL BE CORRECTED OR THAT THE SITE, SERVICES OR CONTENT ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. FURTHER, NOTHING ON THE SITE CONSTITUTES ADVICE, NOR SHOULD THE SITE OR ANY PART THEREOF, BE RELIED UPON IN MAKING, OR REFRAINING FROM MAKING, ANY DECISION, MEDICAL OR OTHERWISE.

**MH** is not liable for any losses you may suffer which result from any viruses, “Trojan Horses”, “worms”, “cancelbots” or other harmful, disruptive or destructive files or computer programs that may infect your computer equipment or other property on account of your access to, or use of the Site, Services or Content. **MH** is not liable for any losses you may suffer which result from any attack from third parties on your **MH** membership program, Account Data or the Site.

IN THE EVENT THAT YOU HAVE A DISPUTE WITH ONE OR MORE USERS OR MEMBERS, **MH** HEREBY DISCLAIMS AND YOU HEREBY WAIVE ANY RECOURSE TO OR AGAINST **MH** AND AGREE TO RELEASE AND INDEMNIFY **MH** AND ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS AND THIRD-PARTY CONTRACTORS AND SUPPLIERS FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, DAMAGES, LOSSES, COSTS AND EXPENSES OF EVERY KIND AND NATURE, KNOWN AND UNKNOWN, SUSPECTED AND UNSUSPECTED, DISCLOSED AND UNDISCLOSED, ARISING OUT OF OR IN ANY WAY CONNECTED WITH SUCH DISPUTES OR ANY BREACH OF THE TERMS AND CONDITIONS OF USE.

You understand and agree that any material or data downloaded or otherwise obtained through the use of the Site or Member Services is done at your own discretion and risk and that **MH** will not be responsible for any damage or loss suffered by you as a result of the download or use of such material or data, including damage to your computer system or loss of data.

UNDER NO CIRCUMSTANCES WILL **MH**, ITS LICENSORS, ITS SUPPLIERS OR ANY THIRD PARTIES MENTIONED ON THE SITE BE LIABLE TO YOU FOR ANY DAMAGES (INCLUDING, WITHOUT LIMITATION, INCIDENTAL AND CONSEQUENTIAL DAMAGES, PERSONAL INJURY/WRONGFUL DEATH, LOST PROFITS, OR DAMAGES RESULTING FROM LOST DATA OR BUSINESS INTERRUPTION) RESULTING FROM USE OF OR INABILITY TO USE THE SITE, SERVICES OR CONTENT, WHETHER BASED ON WARRANTY, CONTRACT, TORT OR ANY OTHER LEGAL THEORY, AND WHETHER OR NOT **MH**, ITS LICENSORS, ITS SUPPLIERS, OR ANY THIRD PARTIES MENTIONED ON THE SITE HAS BEEN INFORMED IN ADVANCE OR OUGHT REASONABLY TO HAVE KNOWN OF THE POTENTIAL FOR SUCH DAMAGES.

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**MH** specifically disclaims any liability to any users in jurisdictions in which the uses of services such as those offered by **MH** are illegal. **MH** is not liable for any consequences resulting from the use of the Site, Services or Content by users in jurisdictions where such use is illegal.

## **20 INDEMNITY**

YOU AGREE TO DEFEND, INDEMNIFY, AND HOLD **MH**, ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, LICENSORS, AND SUPPLIERS, HARMLESS FROM AND AGAINST ANY CLAIMS, ACTIONS OR DEMANDS, LIABILITIES AND SETTLEMENTS INCLUDING WITHOUT LIMITATION, REASONABLE LEGAL AND ACCOUNTING FEES, RESULTING FROM, OR ALLEGED TO RESULT FROM, YOUR VIOLATION OF THE TERMS AND CONDITIONS OF USE.

## **21 FORCE MAJEURE**

**MH** will not be liable for any delay or failure to perform to the extent due to causes beyond its reasonable control.

## **22 TRANSFER OF RIGHTS**

You cannot transfer your rights or commitments arising from this Agreement to anyone. **MH** retains the right to transfer its rights or obligations arising from this Agreement to others without your consent.

## **23 NOTICE**

You agree that sending an email to the email address associated with your **MH** membership program and Account Data will constitute effective notice. If you need to contact **MH** you can do so through the Site, and an email sent to the **MH** email address displayed on the Site will constitute effective notice. Notice will be effective once the email is sent, unless the party sending the email becomes aware that it was not deliverable.

## **24 ARBITRATION**

ANY CLAIM, DISPUTE, OR CONTROVERSY (WHETHER IN CONTRACT, TORT, OR OTHERWISE, WHETHER PRE-EXISTING, PRESENT OR FUTURE, AND INCLUDING STATUTORY, COMMON LAW, INTENTIONAL TORT AND EQUITABLE CLAIMS CAPABLE IN LAW OF BEING SUBMITTED TO BINDING ARBITRATION) AGAINST **MH**, its agents, employees, officers, directors, successors, assigns or affiliates (collectively for purposes of this paragraph, **MH**) arising from or relating to the Terms and Conditions of Use, their interpretation, or the breach, termination or validity thereof, the relationships between the parties, whether pre-existing, present or future, (including, to the full extent permitted by applicable law, relationships with third parties who are not signatories to the Terms and Conditions of Use), **MH**'s advertising, or any related purchase SHALL BE RESOLVED EXCLUSIVELY AND FINALLY according to the laws and regulations of the State of Washington, United States of America. The place of arbitration shall be the State of Washington, United States of America. The language of the arbitration shall be English. The arbitration will be limited solely to the dispute or controversy between the user and **MH**. Any award of the arbitrator(s) shall be final and binding on each of the parties, and may be entered as a judgment in any court of competent jurisdiction.

## **25 GENERAL**

**MH** may change, suspend, or discontinue any aspect of the Site at any time, including the availability of any Services, Content, or related features and databases. **MH** may also impose limits on certain Services and Content or restrict your access to parts or the entire Site without notice or liability.

This Agreement shall be deemed to have been made and performed exclusively in Washington State and shall be governed by and interpreted in accordance with the laws of the State of Washington and the federal laws of the United States of America applicable therein without

regard to conflict of laws principles. Subject to the Arbitration provision above, you agree to submit to the exclusive jurisdiction of the Courts of Washington State, and hereby waive the application of any conflict of laws or rules that would result in a different forum, including physical location, residence or domicile.

**MH's** failure to insist upon or enforce strict performance of any provision of this Agreement will not be construed as a waiver of any provision or right.

The individual clauses of this Agreement are valid independent of each other and, should any part of this Agreement be declared invalid or unenforceable by a court of competent jurisdiction, this will not affect the validity of any remaining portion and such remaining portion shall remain in full force and effect as if the invalid portion of this Agreement had been eliminated.

The parties are independent parties and no agency, partnership, joint venture, employee-employer or franchisor-franchisee relationship is intended nor created by this Agreement and neither party shall state or imply anything to the contrary.

This Agreement constitutes the entire agreement with respect to access and use of the Site and the Services and the relationship between the parties for the purposes of the same.

The rights and remedies of a party hereunder are cumulative and no exercise of enforcement by a party of any right or remedy hereunder shall preclude the exercise or enforcement by the party of any other right or remedy hereunder or which the party is otherwise entitled by law or equity.

This Agreement may not be assigned you. **MH** may assign this Agreement and the Site in its sole discretion without notice to you. This Agreement was written in English and, in any legal dispute, this English version shall be legally binding.

**ALL RIGHTS NOT EXPRESSLY GRANTED HEREIN ARE RESERVED.**

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