

# ARIA Terms of Use

**Last updated: August 26, 2020**

Welcome to ARIA!

These and conditions of use (“Terms of Use”) govern your use of and access to the website located at <https://think-aria.com/>, and any associated online services, mobile applications, platforms, portals, software, and features that are intended to facilitate the care coordination services (collectively, the “Services”). The Services are owned and operated by Smith & Nephew, Inc. (“Smith & Nephew”, “we,” “us,” or “our”). References to “you” or “your” are construed accordingly in these Terms of Use to mean users of the Services, which include Patients and Patient Advocates (as all such terms are defined herein).

Please read these Terms of Use carefully and in their entirety, as these Terms of Use provide important information about your legal obligations, remedies, and rights. By downloading, installing, accessing, or using the Services, you are agreeing to these Terms of Use and our Privacy Policy. If you do not agree to these Terms of Use, you should not download, install, access, or use the Services.

THESE TERMS OF USE CONTAIN A MANDATORY ARBITRATION PROVISION THAT, AS SET FORTH IN THE SECTION ENTITLED “GOVERNING LAW AND DISPUTE RESOLUTION” BELOW, REQUIRES YOU TO ARBITRATE CLAIMS YOU MAY HAVE AGAINST SMITH & NEPHEW ON AN INDIVIDUAL BASIS, MEANING YOU CANNOT BRING CLAIMS AGAINST SMITH & NEPHEW IN COURT, AND CONFIRMS YOUR AGREEMENT TO A CLASS ACTION WAIVER IN ARBITRATION. PLEASE READ IT CAREFULLY AS IT IMPACTS YOUR LEGAL RIGHTS.

## **Not for Emergencies**

The Services are not intended for medical emergencies or urgent situations. You should not disregard or delay to seek medical advice based on anything that appears or does not appear on the Services. **If you believe you have an emergency, call 9-1-1 immediately!**

You should seek emergency help or follow up care when recommended by your Provider or when otherwise needed. Always seek the advice of a physician or other qualified health care

provider concerning questions you have regarding a medical condition and before stopping, starting, or modifying any treatment or modification.

## **Eligibility**

You represent and warrant to us that you have the power and authority to accept and agree to these Terms of Use, and you own or control all of the rights necessary to grant the rights and licenses granted herein.

You must be at least 13 years old to use the Services (or such greater age required in your jurisdiction for you to be authorized to use the Services without parental approval). In addition to being of the minimum required age to use the Services under applicable law, if you are not old enough to have authority to agree to our Terms of Use, your parent or guardian must agree to these Terms of Use on your behalf.

The Services may require certain devices, software, and data connections, which we otherwise do not supply. For as long as you use the Services, you consent to downloading and installing updates to our Services, including automatically.

## **Portal Account**

Patients who agree to use the Services (“Patients”) offered by their health care providers (“Providers”) must create an account with us (“Account”) and provide certain information to access the ARIA Patient Portal of the applicable Providers. Creating an Account will allow you to use certain features of the ARIA Patient Portal and the other applicable Services (e.g., to see Provider and Patient information and use chat and scheduling functions). In addition or in alternative to creating a Patient Account, associates, relatives, guardians, advocates, or other individuals responsible for a Patient (“Patient Advocates”) can create an Account to access the ARIA Patient Portal on behalf of the applicable Patient.

You represent and warrant that all Account registration information you submit is truthful and accurate, and that you will maintain the accuracy of such information at all times. If you are a Patient Advocate, you represent and warrant that you have the authority to create an Account, access the ARIA Patient Portal, and use the other Services on the applicable Patient’s behalf. You agree that you are solely 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 us of any unauthorized use, or suspected unauthorized use, of your Account or any other breach of security. Smith & Nephew cannot and will not be liable for any loss or damage arising from your failure to comply with the requirements in this section.

We may suspend or terminate access to your Account in our sole and absolute discretion. In the case that your Account is terminated, these Terms of Use shall remain, to the extent applicable, in full force and effect.

## **Our Materials and Intellectual Property Rights**

The Services may contain text, images, software, photographs, video, graphics, audio, features, data, designs, computer programs, source and object code, documentation, illustrations, animations, databases, logos, domain names, trade names, trade identities, and other such similar content (collectively, “Materials”). Unless otherwise expressly identified, our Materials are owned by us or by our third party licensors. Our Materials may be protected by United States and international copyright, trademark, and other laws. You may browse the Services and download our Materials solely for your personal use, provided you keep intact all copyright and other proprietary notices. Except as expressly permitted, you may not modify, copy, reproduce, republish, upload, post, transmit, hyperlink to or from, or distribute in any way our Materials from the Services, including code and software underlying the Services, nor may you sell, transfer, or otherwise use the Services or our Materials in commerce or for any public or commercial endeavor without our prior and express written consent. We may in our sole discretion make changes to our Materials at any time without notice.

## **Medical Information**

Our Materials may contain general information related to medical conditions, treatment, and other health care topics. Any such information is provided for informational purposes only and is not and should not be interpreted as medical advice or as a substitute for consultation with a physician or other qualified health care professional. You should always consult with a doctor or other health care professional for medical advice or information about diagnosis and treatment. The receipt of any User Content does not create a professional relationship and

does not create any privacy interests other than those that may be described in our [Privacy Policy](#).

## User Content

In your use of the Services, you may submit, upload, post, email, or transmit to us or your content and information, including without limitation text, photos, audio, code, instructions, requests, ideas, suggestions, comments, surveys, communications, forms and agreements, files, videos, images, and other materials (collectively, “User Content”). Except for Personal Information (as defined in our [Privacy Policy](#)) maintained in accordance with our Privacy Policy and which may be governed by applicable privacy laws and regulations, you acknowledge and agree that any User Content will be treated as non-confidential and non-proprietary. By submitting, posting, or displaying User Content, you give Smith & Nephew, the applicable Providers, Patients, and Patient Advocates, and their sub-licensees, successors, and assigns a perpetual, irrevocable, worldwide, royalty-free, and non-exclusive license to reproduce, adapt, modify, translate, publish, publicly perform, publicly display, distribute, reproduce, edit, reformat, and create derivative works from any User Content that you submit, post, transmit, or display on or through the Services, to the extent permitted by applicable privacy laws. Smith & Nephew shall be free to use any ideas, concepts, know-how, or techniques contained in any User Content, including, without limitation, developing and marketing products using such information.

## User Conduct and Responsibilities

You are required to comply with all applicable federal, state, and local laws in connection with your use of the Services. As a condition of your use of the Services, you agree that you will not use the Services for any purpose that is unlawful or prohibited by these Terms of Use. You agree that you will only provide information in connection with any and all other uses of the Services that is true and accurate, identifies only you, and is not false, misleading, or otherwise an impersonation of any person or entity.

You agree not to, without limitation:

- use any content or information (e.g., our Materials) available on the Services for any unauthorized purpose;
- interfere with or damage the Services or servers or networks connected to the Services or disobey any requirements, procedures, policies, or regulations of networks connected to the Services, including, without limitation, through the use of viruses, cancel bots, Trojan horses, harmful code, flood pings, denial of service attacks, packet or IP spoofing, forged routing of electronic mail address information, or similar methods or technology;
- upload, post, e-mail, or otherwise transmit any unsolicited or unauthorized advertising, promotional materials, “junk mail”, “spam”, “chain letters”, “pyramid schemes”, or any other form of solicitation;
- upload, post, e-mail, or otherwise transmit any materials that you do not have a right to transmit under any law or under contractual or fiduciary relationships;
- attempt to reverse engineer, reverse assemble, reverse compile, decompile, disassemble, translate, or otherwise alter, defraud, or create false results from any executable code, information on, or received by the Services;
- harvest or collect Personal Information (as defined in our [Privacy Policy](#)) about any other individual who uses the Services;
- infringe or facilitate infringement on any copyright, patent, trademark, trade secret, or other proprietary, publicity, or privacy rights of any party, including, but not limited to, such rights of third parties; or
- assist any third party in engaging in any activity prohibited by these Terms of Use.

You are solely responsible for your conduct and any User Content that you submit, post, transmit, or display on or through the Services. You agree not to, without limitation, upload, post, submit, publish, transmit, or display User Content that:

- you do not own or do not have the right to post, including proprietary material of any third party;
- infringes any intellectual property or other right of any entity or person, including violating anyone’s patent, copyright, trademark, trade secret, right of privacy, right of publicity, or moral rights;
- breaches any agreement with any other person or entity;

- does not pertain directly to the Services;
- violates any law or may be considered to violate any law;
- advocates illegal activity or conveys an intent to commit an illegal act;
- is violent, vulgar, obscene, pornographic, sexually suggestive, or indecent;
- threatens or abuses others, libels, defames, invades privacy, stalks, bullies, is false, discriminatory, racist, hateful, abusive, harassing, or offensive, or otherwise injurious or objectionable;
- seeks to exploit or harm children by exposing them to inappropriate content, asking for personally identifiable details that are not directly related to the Services, or otherwise;
- impersonates or spoofs someone else's identity, or misrepresents your connection to any other entity or person or otherwise forges or manipulates headers or identifiers (including URLs) to disguise the origin of our Materials;
- advertises any commercial endeavor (e.g., offering for sale products or services) or otherwise engages in any commercial activity (e.g., conducting raffles or contests, displaying sponsorship banners, and/or soliciting goods, funds, advertisers, sponsors, or services), except as may be specifically authorized on the Services;
- constitutes spam or other unsolicited communications;
- includes programs which contain viruses, worms, spyware, malware, and/or Trojan horses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications;
- negatively disrupts or impacts how any page is rendered or displayed in a user's browser or device or affects the ability of other people to engage in real time activities via the Services;
- disobeys any policy or regulation established from time to time regarding use of the Services or any networks related to the Services; or
- contains hyperlinks to other sites that contain content that falls within the descriptions set forth above.

You represent, warrant, and agree that you will comply with the above use requirements and restrictions. In addition to any remedies that we may have at law or in equity, if we determine, in our sole discretion, that you have violated or are likely to violate the foregoing prohibitions, we may take any action we deem necessary to cure or prevent the violation, including without

limitation, the immediate removal of User Content or related materials from the Services and termination of your Account.

Certain portions of the Services may have additional terms and conditions. When these portions are used, you agree to be further bound by the associated additional terms and conditions.

## **Privacy**

Your privacy is very important to us. Please read our [Privacy Policy](#) for information on how we will handle your Personal Information provided in connection with your use of the Services. By accepting these Terms of Use you are also accepting the terms of our Privacy Policy, which are incorporated herein by reference for all applicable purposes.

## **Electronic and Telephonic Communications**

When you use the Services, or send e-mails, messages (e.g., via our chat features), and other communications from your desktop or mobile device to us, you are communicating with us electronically.

By providing us with your contact information and using the Services, you agree to receive communications, including via e-mail, text messages, phone calls, and push notifications from or on our behalf or the behalf of the applicable Provider or Patient at the email address or telephone number you provided. By providing us with the telephone number for other people so that we (and our vendors) can contact them, you represent and warrant that you have obtained their permission to provide us with their telephone numbers and for us (and our vendors on our behalf) to send SMS text messages to them about your use of the Services. Please read our [Privacy Policy](#) to learn more about our communications practices.

You agree that any notices, agreements, disclosures, or other communications that we send to you electronically will satisfy any legal communication requirements, including that those communications be in writing. We may send and receive text messages through cellular telephone operators or other networks, and the level of reliability may vary. We are not responsible for the timeliness or final delivery of text messages, as that is outside our control and is the responsibility of the cellular telephone operator or other networks. In addition to any

fees we may charge for use of the Services, your carrier may charge standard messaging, data, and other fees, and you are responsible for those charges. Notwithstanding the foregoing, we will use your mobile number in accordance with our [Privacy Policy](#).

IF YOU WISH TO OPT OUT OF MARKETING EMAILS FROM US, YOU CAN UNSUBSCRIBE BY FOLLOWING THE UNSUBSCRIBE OPTIONS IN THE MARKETING EMAIL ITSELF. IF YOU WISH TO OPT OUT OF TEXT MESSAGES FROM US, YOU CAN DO SO BY TEXTING THE APPLICABLE KEYWORD PROVIDED IN THE TEXT MESSAGE(S), FROM THE MOBILE DEVICE RECEIVING THE MESSAGES. You understand and agree that you may continue to receive communications from us while we process your opt-out requests, and you may also receive a communication confirming the receipt of your opt-out requests.

## **Third Party Sites and Referrals**

The Services may contain links, references, and other forms of connectivity to websites, platforms, and applications maintained and controlled by third parties (“Third Party Sites”). Inclusion of any link to Third Party Sites does not imply an endorsement or recommendation of any material, substance, information, practice, or the owner or proprietor of such Third Party Sites by us. We make no representations or warranties of any kind as to the accuracy, currency, or completeness of any content or information contained in Third Party Sites and shall have no liability for any damages or injuries of any kind arising from such content or information contained in Third Party Sites. If you decide to access any Third Party Sites linked to by the Services, you do so entirely at your own risk. You should refer to the terms and policies of any Third Party Sites you use to determine your rights and responsibilities.

Any referral by a Provider to another health care provider or third party product, service, offering, or otherwise does not constitute or imply the endorsement or recommendation of such by Smith & Nephew. Any views expressed by other users, including Patients, Patient Advocates, and Providers through the Services are solely the views of such users and Smith & Nephew assumes no responsibility for the accuracy or veracity of any statement made by such users.

## **Disclaimer**



YOU USE THE SERVICES AT YOUR OWN RISK AND SUBJECT TO THE FOLLOWING DISCLAIMERS. WE ARE PROVIDING THE SERVICES ON AN “AS IS” AND “AS AVAILABLE” BASIS WITHOUT ANY EXPRESS OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, AND FREEDOM FROM COMPUTER VIRUS OR OTHER HARMFUL CODE. WE DO NOT WARRANT THAT ANY INFORMATION PROVIDED BY US IS ACCURATE, COMPLETE, OR USEFUL, THAT THE SERVICES WILL BE OPERATIONAL, ERROR FREE, SECURE, OR SAFE, OR THAT THE SERVICES WILL FUNCTION WITHOUT DISRUPTIONS, DELAYS, OR IMPERFECTIONS. WE DO NOT CONTROL, AND ARE NOT RESPONSIBLE FOR, CONTROLLING HOW OR WHEN OUR USERS USE THE SERVICES OR THE FEATURES, SERVICES, SOFTWARE, AND INTERFACES OUR SERVICES PROVIDE. WE ARE NOT RESPONSIBLE FOR AND ARE NOT OBLIGATED TO CONTROL THE ACTIONS OR INFORMATION OR CONTENT OF OUR USERS OR OTHER THIRD PARTIES. WE DISCLAIM ANY LIABILITY FOR THE ACTIONS OR INACTIONS OF USERS ON OR OFF THE SERVICES. YOU RELEASE US AND OUR DIRECTORS, OFFICERS, EMPLOYEES, PARTNERS, AND AGENTS FROM ANY CLAIM, COMPLAINT, CAUSE OF ACTION, CONTROVERSY, OR DISPUTE (TOGETHER, “CLAIM”) AND DAMAGES, KNOWN AND UNKNOWN, RELATING TO, ARISING OUT OF, OR IN ANY WAY CONNECTED WITH ANY SUCH CLAIM YOU HAVE AGAINST ANY THIRD PARTIES.

NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM US OR THROUGH OR FROM THE SERVICES SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THESE TERMS OF USE.

## **Limitation of Liability**

IN NO EVENT SHALL SMITH & NEPHEW OR OUR DIRECTORS, OFFICERS, EMPLOYEES, PARTNERS, AND AGENTS BE LIABLE TO YOU FOR ANY LOST PROFITS OR CONSEQUENTIAL, SPECIAL, PUNITIVE, INDIRECT, OR INCIDENTAL DAMAGES RELATING TO, ARISING OUT OF, OR IN ANY WAY IN CONNECTION WITH THESE TERMS OF USE, US, OR THE SERVICES, INCLUDING WITHOUT LIMITATION, ANY ACTION YOU TAKE BASED ON THE INFORMATION YOU RECEIVE IN, THROUGH, OR FROM THE SERVICES, WHETHER BASED ON WARRANTY, CONTRACTS, STATUTES, REGULATIONS, TORT (INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE), OR ANY OTHER LEGAL THEORY EVEN IF WE OR OUR DIRECTORS, OFFICERS, EMPLOYEES, PARTNERS, AND AGENTS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. OUR AGGREGATE LIABILITY

RELATING TO, ARISING OUT OF, OR IN ANY WAY IN CONNECTION WITH THESE TERMS OF USE, US, OR THE SERVICES SHALL NOT EXCEED THE GREATER OF ONE HUNDRED DOLLARS (\$100) OR THE AMOUNT YOU HAVE PAID US IN THE PAST TWELVE MONTHS. THE FOREGOING DISCLAIMER OF CERTAIN DAMAGES AND LIMITATION OF LIABILITY WILL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. THE LAWS OF SOME STATES OR JURISDICTIONS MAY NOT ALLOW THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES, SO SOME OR ALL OF THE EXCLUSIONS AND LIMITATIONS SET FORTH ABOVE MAY NOT APPLY TO YOU.

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THESE TERMS OF USE, IN SUCH CASES, THE LIABILITY OF THE SMITH & NEPHEW OR OUR DIRECTORS, OFFICERS, EMPLOYEES, PARTNERS, AND AGENTS WILL BE LIMITED TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW. SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU.

## **Indemnification**

You agree to defend, indemnify, reimburse, and hold harmless Smith & Nephew and our directors, officers, employees, partners, agents, successors, designees, licensees, sublicensees, and assigns from and against any and all liability, loss, damages, judgments, costs, and expenses (including reasonable attorneys' fees, costs and expenses, and court costs) arising out of or related to: (i) your use of the Services and our Materials; (ii) your violation, breach, or alleged breach of these Terms of Use or our [Privacy Policy](#); (iii) your violation or alleged or threatened violation of any laws, rules, or regulations, or any rights of a third party, including, without limitation, any trademark, copyright, patent, trade secret, defamation, right of privacy or publicity, or moral rights of any third party, arising from User Content. You will cooperate as fully as required by us in the defense or settlement of any claim.

## **Governing Law and Dispute Resolution**

These Terms of Use shall be governed by and construed in accordance with the laws of the State of Tennessee excluding its conflict of law rules.

Any controversy or claim arising out of or relating to these Terms of Use, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association ("AAA") in

accordance with its Commercial Arbitration Rules by a sole arbitrator. The parties hereto shall endeavor to agree upon the arbitrator, and if they fail to do so within twenty-one (21) days of the commencement of the Arbitration, the appointment shall be made by the AAA in accordance with the Commercial Arbitration Rules. The place, or legal seat of arbitration, shall be New York, and the language of the arbitration shall be English.

You may only bring claims in your individual capacity on your own behalf, and not in any representative capacity or on behalf of any class or purported class, and no arbitration you commence hereunder may be joined with or include any claims by any other persons. Each party shall bear its own arbitration filing fees.

The arbitrator shall issue a reasoned award and shall have the power to grant any interim or provisional measures that the arbitrator deems appropriate, including, but not limited to, injunctive relief and specific performance, and any interim or provisional measures ordered by the arbitrator may be specifically enforced by any court of competent jurisdiction as a final award. Nothing herein, however, shall authorize the arbitrator to act as amiable compositeurs or to proceed ex aequo et bono. Each party hereto retains the right to seek interim measures from a judicial authority, and any such request shall not be deemed incompatible with the agreement to arbitrate or a waiver of the right to arbitrate. The arbitrator shall award the prevailing party, if any as determined by the arbitrator, its reasonable costs, including reasonable attorney's fees. Judgment on any award rendered by the arbitrator may be entered in any court of competent jurisdiction. No information concerning an arbitration, beyond the names of the parties, their counsel or the relief requested, may be unilaterally disclosed to a third party by any party unless required by law. Any documentary or other evidence given by any party or witness in any arbitration shall be treated as confidential by any party whose access to such evidence arises exclusively because of its participation in the arbitration and shall not be disclosed to any third party (other than a witness or expert), except as may be required by law. Any party who commences any judicial proceeding in connection with an arbitration initiated hereunder shall endeavor to have the judicial record of any such proceeding sealed to the extent permitted by law.

## **No Third Party Rights**

Unless expressly stated in these Terms of Use to the contrary, nothing herein is intended to confer any rights or remedies on any persons other than you, Smith & Nephew, and our successors, designees, and assigns. Nothing in these Terms of Use is intended to relieve or discharge the obligation or liability of any third persons to you and Smith & Nephew and our successors, designees, and assigns, nor shall any provision give any third parties any right of subrogation or action over against you, Smith & Nephew, and our successors, designees, and assigns.

## **Assignment**

We shall have the right to assign these Terms of Use in whole or in part to any person or business entity. You may not assign your rights or delegate your obligations under these Terms of Use without our prior written consent.

## **Entire Agreement**

These Terms of Use, together with our Privacy Policy, set forth the entire understanding and agreement of you and Smith & Nephew as to the subject matter hereof and supersede all prior proposals, discussions, or agreements (oral and written) with respect to such subject matter. If any provision of these Terms of Use shall be unlawful, void, or for any reason unenforceable, then that provision shall be deemed severable from these Terms of Use and shall not affect the validity and enforceability of any remaining provisions. Smith & Nephew's failure to act with respect to a breach by you or others does not waive Smith & Nephew's right to act with respect to antecedent, subsequent, or similar breaches.

## **Force Majeure**

We will not be deemed to be in breach of these terms or liable for any breach of these Terms of Use or our [Privacy Policy](#) due to any event or occurrence beyond our reasonable control, including without limitation, acts of God, terrorism, war, invasion, failures of any public networks, electrical shortages, earthquakes or floods, civil disorder, strikes, fire, pandemics/epidemics, or other disaster.

## Modification and Survival

Smith & Nephew reserves the right to modify these Terms of Use from time to time in its sole discretion, effective upon posting. In the event of such changes, we will post the changes on this page and/or notify you via email. Any use of the Services after such changes shall be deemed an acceptance of those changes. You should periodically visit this page to review the current Terms of Use, so you are aware of any such revisions to which you are bound.

We may also impose rules for and limits on use of the Services or restrict your access to all or part of the Services without notice or penalty.

These Terms of Use will survive any termination, discontinuation, or cancellation of the Services or your Account.

## Contact

If you have any questions regarding these Terms of Use, please contact us at:

### Email Address

[privacy@think-aria.com](mailto:privacy@think-aria.com)

### Mailing Address

Smith+Nephew  
Attn: ARIA Privacy Team  
2875 Railroad Street  
Pittsburgh, PA 15222

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