

## Terms, Conditions of Use, & Privacy Policy

**BY ACCESSING OR USING THE NEW MEXICO 5-ACTIONS PROGRAM™, YOU ARE AGREEING TO DO SO WITHIN THE TERMS, CONDITIONS, AND PRIVACY POLICY OUTLINED IN THIS AGREEMENT. PLEASE READ IT CAREFULLY, AND IF YOU DO NOT ACCEPT THESE TERMS, THEN YOU MAY NOT USE THE PROGRAM.**

### *Who We Are*

Digital Therapeutics Group LLC (Us, We, Our) is an Oregon-based education company that develops and implements online/digital learning programs and services that help users address challenges with pre-addiction and addiction to substances and behaviors (e.g., gambling, sex, food, technology). The New Mexico 5-Actions Program™ (“the Program”) is the property of Digital Therapeutics Group LLC, that has licensed use of the Program to the New Mexico Health Care Authority, Behavioral Health Services Division, through its affiliate relationship with ProtoCall Services, Inc. doing business as the New Mexico Crisis and Access Line.

### *Medical Disclaimer*

We are not a certified or licensed healthcare provider, nor is it a treatment facility or medical organization. We do not give medical advice or diagnostic care, services, or supplies related to the health of an individual. Nothing contained in this website should be construed as medical advice or diagnostic care, treatment, or professional care related to the physical or mental health of an individual. We specifically disclaim any medical knowledge or affiliation.

The information presented and generated by Us is educational and should never be a substitute for medical or psychological consultation, evaluation, diagnosis, or treatment. *Please consult with your physician before, during, and after visiting the Program.*

### *Need Immediate Help?*

*IF YOU ARE HAVING A MEDICAL EMERGENCY, PLEASE DIAL 911. IF YOU ARE HAVING A PSYCHOLOGICAL CRISIS, PLEASE DIAL 988, 1-800-273-TALK (8255) OR TEXT 741741.*

### *User Information*

The Program is FREE for all residents of the state of New Mexico, paid for by the New Mexico Health Care Authority, Behavioral Health Services Division. By accepting this Agreement, you are affirming that you are a resident of the state of New Mexico. If you are not a resident of New Mexico, but would like access to the Program, please email [info@5actions.com](mailto:info@5actions.com).

### *No Guarantee of Specific Results*

While We provide users with accurate, evidence-based information, tools, and resources to guide change efforts specific to pre-addiction and addiction, We disclaim any specific outcome. We do not guarantee that you will achieve the outcome you seek from use of the Program. We do not promise or guarantee that you will be cured or that your efforts related to the Program will lead to successful behavior change. We do not guarantee any particular result or that the content herein will help you in your efforts to address pre-addiction or addiction in your life. The short and long-term outcomes from using the Program have not been evaluated, so its ability to help you reduce or stop use of substances or addictive behaviors has not been studied.

## Terms & Conditions of Use

This Terms of Use Agreement (“Agreement”) sets forth the legally binding terms for your use of the Program. By using the Program, you agree to be bound by this Agreement, even though your use of the Program is FREE

and paid for by the New Mexico Health Care Authority, Behavioral Health Services Division. The term “User” refers to any person using the Program. You are only authorized to use the Program (regardless of whether your access or use is intended) if you agree to abide by all applicable laws and to this Agreement. If you do not agree with it, you should leave the Program website and discontinue use of the Program immediately.

We may modify this Agreement from time to time, and such modification shall be effective upon posting on the Program website. You agree to be bound to any changes to this Agreement when you use the Program after any such modification is posted. It is therefore important that you review this Agreement regularly to ensure you are updated as to any changes.

This Program is protected by the copyright, trademark and trade secret laws in the United States and foreign laws. All right, title and interest to the Program remains with Digital Therapeutics Group LLC. Any use of the Program not expressly permitted by this Agreement is a breach of this Agreement and may violate copyright, trademark, and other laws. The Program and its features are subject to change or terminate without notice in the editorial discretion of the Program. If you violate any of this Agreement, your permission to use the Program automatically terminates.

This Program is being presented for your personal use. We grant you a non-exclusive, non-transferable, non-sublicensable, limited right and license to access it for your personal use only.

1. No Reproduction of Materials. The material in the Program is protected under state and federal copyright, trademark law and other laws. By accessing the material in the Program, you do not obtain any ownership interest or rights to the material found on the website, nor are you permitted to create any derivative works of such material. All rights to the content of the site, or the content or material thereon, automatically terminates the permission or license granted by Us hereunder. Copyright and trademark infringement are violations of federal and state law and are subject to criminal and civil penalties.
2. Liability of Us and Our Licensors. The use of the Program is at your own risk. When using the Program, information will be transmitted over a medium which is beyond the control and jurisdiction of Us. Accordingly, We assume 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 Program.

The Program is provided on an “as is” basis. WE, TO THE FULLEST EXTENT PERMITTED BY LAW, DISCLAIM ALL WARRANTIES, EITHER EXPRESS OR IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT OF THIRD PARTIES RIGHTS AND FITNESS FOR A PARTICULAR PURPOSE. Specifically, the Program makes no representations or warranties about the following:

- A. The effectiveness, accuracy, reliability, completeness, or timeliness of the content, text, graphics, links, or communications provided on or through the use of the Program.
- B. The effectiveness of the Program in helping you to reach a personal goal. In no event, shall We, Our licensors or any third parties mentioned in the Program be liable 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 the use or inability to use the Program, whether based on warranty, contract, tort or any other legal theory, and whether or not We are advised of the possibility of such damages. WE ARE NOT LIABLE FOR ANY PERSONAL INJURY, INCLUDING DEATH, CAUSED BY THE USE OF, OR MISUSE OF THE PROGRAM. Any claims arising in connection with your use of the Program must be brought within one year of the date of the event giving rise to such action occurred. Remedies under this Agreement are exclusive and are limited to those expressly provided for in these Agreement.

3. No Unlawful or Prohibited Use/Intellectual Property. You are granted a non-exclusive, non-transferable, revocable license to access and use the Program strictly in accordance with these terms of use. As a condition of your use of the Program, you warrant to Us that you will not use it for any purpose that is unlawful or prohibited by these Terms. You may not use the Program in any manner which could damage, disable, overburden, or impair the Program or interfere with any other party's use and enjoyment of it. You may not obtain or attempt to obtain any materials of information through any means not intentionally made available or provided for through Us

All content included as a part of the Program, such as text, graphics, logos, images, as well as the compilation thereof, and any software used in the Program, is the property of Digital Therapeutics Group LLC and protected by copyright and other laws that protect intellectual property and proprietary rights. You agree to observe and abide by all copyright and other proprietary notices, legends or other restrictions contained in any such content and will not make any changes thereto.

You will not modify, publish, transmit, reverse engineer, participate in the transfer or sale, create derivative works, or in any way exploit any of the content, in whole or in part, found in the Program. The Program content is not for resale. Your use of the Program does not entitle you to make any unauthorized use of the Program or of any protected content, and in particular you will not delete or alter any proprietary rights or attribution notices in any content. You will use protected content solely for your personal use and will make no other use of the content without express written permission of Digital Therapeutics Group LLC. You agree that you do not acquire any ownership rights in any protected content. We do not grant you any licenses, express or implied, to the intellectual property of the Program, or Our licensors except as expressly authorized by in this Agreement.

4. General Restrictions. You may not transfer, copy, or display the content, except as permitted herein. In addition, you may not sell, rent, lease, distribute, broadcast, sublicense or otherwise assign any right to the content to any third party. You may not remove any proprietary notices or label on the Program. You may not attempt to disable, bypass, modify, defeat, or otherwise circumvent any digital rights management system used as part of the Program or use the Program for any illegal purpose.
5. Electronic Communications. Visiting the Program website or sending emails to the Us constitutes electronic communications. You consent to receive electronic communications and you agree that all agreements, notices, disclosures, and other communications that We provide to you electronically, via email and on the Program, satisfy any legal requirement that such communications be in writing.
6. Advertising and Links to Other Sites. We do not endorse the content of any third-party website. We are not responsible for the content of links, third-party sites, sites framed within the Program or third-party advertisements and does not make any representations regarding their content or accuracy. Your use of third-party websites is at your own risk. We do not endorse any product advertised on the Program website.
7. Eligibility. Use of the Program is void where prohibited. By using the Program, you represent and warrant that (a) all registration information you submit is truthful and accurate; (b) you will maintain the accuracy of such information; (c) you are 18 years of age or older; and (d) your use of the Program does not violate any applicable law or regulation. Your profile may be deleted, and your use may be terminated without warning if you do not abide by this eligibility criteria set forth herein.
8. Term. This Agreement shall remain in full force and effect while you use the Program or are a User.
9. Fees. Use of the Program is FREE for all Users of the state of New Mexico within the scope of this Agreement. Digital Therapeutics Group LLC reserves the right to charge for the Program and to change its fees from time to time should the cost of the Program not be covered by the state.

10. Non-Commercial Use by Users. The Program is for your personal use only and may not be used in connection with any commercial endeavors except those that are specifically endorsed or approved by Us. Illegal and/or unauthorized use of the Program, including collecting usernames and/or email addresses of Users by electronic or other means for the purpose of sending unsolicited email or unauthorized framing of or linking to the Program is prohibited. Appropriate legal action will be taken for any illegal or unauthorized use of the Program.
11. Disclaimers. We are not responsible for any incorrect or inaccurate content posted on the Program website or in connection with the Program services. Profiles created and postings made by Users on the Program website may contain links to other websites. We are not responsible for the content, accuracy or opinions expressed on such websites, and such websites are in no way investigated, monitored, or checked for accuracy or completeness by Us. Inclusion of any linked website on the Program does not imply approval or endorsement of the linked website by Us. When you access these third-party sites, you do so at your own risk. We take no responsibility for third party advertisements that are posted on the Program website or through the Program services, nor does it take any responsibility for the goods or services provided by its advertisers. We are not responsible for the conduct, whether online or offline, of any User of the Program. We assume no responsibility for any error, omission, interruption, deletion, defect, delay in operation or transmission, communications line failure, lost data, corrupted data, theft or destruction or unauthorized access to, or alteration of, any User communication. You are encouraged to use a virtual private network (VPN), otherwise, privacy and security is unlikely. We are not responsible for any problems or technical malfunction of any telephone network or lines, computer online systems, servers or providers, computer equipment, software, failure of any email or players due to technical problems or traffic congestion on the Internet or on any of the Program services or combination thereof, including any injury or damage to Users or to any person's computer related to or resulting from participation or downloading materials in connection with the Program. Under no circumstances shall We be responsible for any loss or damage, including personal injury or death, resulting from use of the Program, attendance at a Program event, from any content posted on or through the Program services, or from the conduct of any Users of the Program, whether online or offline. The Program is provided "AS-IS" and expressly disclaims any warranty of fitness for a particular purpose, merchantability, or non-infringement. We cannot guarantee and does not promise any specific results from use of the Program.

We do not operate the crisis help lines listed on the website, however, as a courtesy, We provide notice that mental health services may involve discussing sensitive aspects of your life in; you may experience uncomfortable feelings like sadness, guilt, anger, frustration, loneliness, or helplessness. If at any point you experience significant increased distress or have thoughts of harming yourself or others, you agree to notify your mental health provider so that an appropriate level of support can be provided.

12. Limitation on Liability. TO THE MAXIMUM EXTENT NOT PROHIBITED BY LAW, EXCEPT IN THE CASE OF GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, IN NO EVENT SHALL THE WE BE LIABLE TO YOU OR TO ANY THIRD PARTY FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES, INCLUDING LOST PROFIT DAMAGES ARISING FROM YOUR USE OF THE SERVICES, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, OUR LIABILITY TO YOU FOR ANY CAUSE WHATSOEVER AND REGARDLESS OF THE FORM OF THE ACTION, WILL AT ALL TIMES BE LIMITED TO THE AMOUNT PAID, IF ANY, BY YOU TO US FOR THE PROGRAM SERVICES DURING THE TERM.
13. Disputes. If there is any dispute about or involving the Program, you agree that the dispute shall be governed by the laws of Oregon, USA, without regard to conflict of law provisions. All disputes must be settled by arbitration in Clackamas County, Oregon, utilizing the dispute resolution procedures of the Arbitration Service of Portland (ASP) provided that the foregoing shall not prevent Us from seeking injunctive relief in a state for federal court of competent jurisdiction in Clackamas County, Oregon.

14. Indemnity. To the full extent allowed by law, you agree to indemnify and hold Us, Our subsidiaries, and affiliates, and their respective officers, agents, partners and employees, harmless from any loss, liability, claim, or demand, including reasonable attorneys' fees, made by any third party due to or arising out of your use of the Program in violation of this Agreement and/or arising from a breach of this Agreement and/or any breach of your representations or warranties set forth above and/or if any content that you post on the Program website or through the Program services causes Us to be liable to another.
15. Other. This Agreement is accepted upon your use of the Program or any of the Program services and is further affirmed by your becoming a User. This Agreement constitutes the entire agreement between you and Us regarding the use of the Program. The failure of Us to exercise or enforce any right or provision of this Agreement shall not operate as a waiver of such right or provision. The 5-Actions Program™ is a trademark of Digital Therapeutics Group LLC dba as the 5-Actions Program. This Agreement operates to the fullest extent permissible by law. If any provision of this Agreement is unlawful, void, or unenforceable, that provision is deemed severable from this Agreement and does not affect the validity and enforceability of any remaining provisions.
16. General. Use of the Program is permissible in the state of New Mexico within the scope of this Agreement. Use of the Program makes no claims that it is appropriate or may be accessed and used outside of the state of New Mexico. Access to the Program may not be legal by certain persons or in certain countries. If you access the Program from outside the United States, you do so at your own risk, and you are solely responsible for compliance with the laws of your jurisdiction. All of the provisions of this Agreement survive the expiration or termination of this Agreement for any reason whatsoever.

If any provisions of these Agreement are found to be invalid by any court having competent jurisdiction, the invalidity of such provision shall not affect the validity of the remaining provisions of these Agreement, which shall remain in full force and effect. No waiver of any of these Agreement shall be deemed a further or continuing waiver of such term or condition or any other term or condition.

## Privacy Policy

At Digital Therapeutics Group LLC, protecting your privacy is important to us. We understand you may have questions or concerns regarding disclosing personal information and how this information will be used. With this in mind, We have developed this Privacy Policy.

### *Applicability of Privacy Policy*

This Privacy Policy applies solely to information We collect through the Program. On some of the pages on the Program, you may be able to conduct personal tests, submit queries, download information, and be referred to links outside the website that are in no way associated with Us or the Program (see below Links to Other Sites).

The types of information We collect when you access the Program may include the following:

1. Your electronic mail ("email") address
2. The county you reside in
3. How you learned about the Program
4. Whether you are using the site for yourself, a loved one, or as a healthcare or criminal justice professional
5. Information and data that you *provide permission to collect* for research and outcome purposes
6. Any information that you may provide in a form on the Program website
7. The Internet Protocol address from which you accessed the Program website
8. Contents of queries

9. The items you clicked on the applicable web page

### ***Our Use of Your Information***

For Users of the Program, We may aggregate the responses of your data, tests, or other non-personal data to create anonymous aggregated data, and provide the anonymous aggregated data to the state of New Mexico. For any User, We may aggregate your non-personal data with the non-personal data of Our other Users. We also collect and analyze general traffic patterns within the Program to help maintain the flow and content of the Program, and We may use some or all of this anonymous aggregated information to support Our commercial activities or for any other reason.

In addition, We may collect other personally identifiable information about you through the Program to learn more about you and to provide you with services. Except as specified in this Privacy Policy or as otherwise authorized by you, We will not disclose your personally identifiable information to any third party, unless required to do so by law; provided, however that We may (i) use such information to support customer satisfaction initiatives, (ii) from time to time disclose such information to other companies that are affiliates of the Program, and (iii) disclose such information to a third party that is a successor to all or part of Our business, provided that such third party agrees to comply with the provisions of Our Privacy Policy with respect to the use of your information. We may from time to time send information or updates on the Program to the email address you provide to us, including follow-up outcome assessments. If you prefer not to receive such emails, please follow the procedures set forth at the end of each email explaining how you can have your email address removed from the applicable email list. Alternatively, you may contact Us at [info@5actions.com](mailto:info@5actions.com) and let Us know you would like to “opt out” of receiving emails.

We are a private entity not affiliated with any business, organization, public agency or with the federal, state, or municipal government. In the event that you are becoming a User of the Program through or by invitation of a business, organization, public agency or the federal, state or town government or any municipal organization, We welcome you; however please be advised that We are providing services to the governmental organization by contract and We are not a public agency or governmental affiliate. We are not responsible for the actions or inactions of the business, organization or governmental entity of any nature including the privacy and security of information which you may supply to the public or governmental agency.

We will never sell or rent your private information.

### ***Links to Other Sites***

When you are using the Program you could be directed to other third party sites that are beyond Our control. We do not endorse, and are not responsible for, the privacy practices or the content of these websites. Moreover, these other sites may send their own cookies to users, collect data, or solicit personal information. While the We strive to protect its Users’ personal information disclosed online, this Privacy Policy does not extend to anything that is inherent in the operation of the Internet, and therefore beyond the Our control, and is not to be applied in any manner contrary to applicable law or governmental regulation.

### ***Information from Children***

We do not knowingly solicit or collect information from any individuals under the age of 18, nor do We provide any of Our products or services to individuals under the age of 18. If you believe that We have inadvertently collected any such information, or provided any such products or services, please contact Us immediately so that We may delete the information.

### ***Our Commitment to Data Security***

To prevent unauthorized access to your personally identifiable information, maintain data accuracy, and ensure the correct use of such information, We have put in place certain physical, electronic, and managerial procedures to safeguard and secure the information We collect, although no system is completely secure. We

urge you to take adequate precautions to protect your personal data, which should include never sharing your username and password with anyone.

#### ***Changes to Our Privacy Policy***

We reserve the right to revise this Privacy Policy from time to time at Our discretion. If We modify this Privacy Policy, We will post the revised Privacy Policy, which will take effect immediately upon posting, and We may attempt to notify you of such a change through the email address you provide to us. It is your responsibility to periodically review this Privacy Policy.

#### ***How to Contact Us***

Should you have questions or concerns about this Privacy Policy or any other matter pertaining to Our privacy practices, please contact Us at: **[info@5actions.com](mailto:info@5actions.com)**.