

Breathe Remote Monitor (RM) – App Terms ("Terms")

Effective from: 9 March 2021

PLEASE READ THESE TERMS CAREFULLY

BY DOWNLOADING THE APP YOU AGREE TO THESE TERMS. IF YOU DO NOT AGREE TO THESE TERMS, PLEASE DELETE THE APP.

1 About the App

- 1.1 This mobile application (the **App**) is provided to you by Magic Bullet Limited, 350 Wokingham Road, Earley, Reading, Berkshire RG6 7DE (**Magic Bullet, we, us, our**). Our company number is 04886771.
- 1.2 These Terms are an agreement between you (the user) and us for your use of the App, on a non-exclusive, non-transferable, revocable basis, and will start when you download the App for the first time.
- 1.3 We provide this App to allow you to collate the health measures that matter to you and/or your patients in one place to empower and enable personal health management. Data can be collected from a variety of medical and consumer grade devices including spirometers for lung function, oximeter for blood oxygen saturations, smart watch for resting heart rate, activity and sleep, manual entry for weight and temperature. Self-reported measures can also be recorded for wellness, cough frequency, cold, flu, hay fever, haemoptysis and interventions.
- 1.4 These Terms should be read alongside our App Privacy Policy.

2 Use of the App

- 2.1 By using the App, you agree **not to**:
 - (a) copy, modify, adapt, decompile or reverse-engineer all or any part of the App;
 - (b) infringe our intellectual property rights or those of any third party in relation to your use of the App (to the extent that such use is not licensed by these Terms);
 - (c) transmit any material that is defamatory, offensive or otherwise objectionable in relation to your use of the App;
 - (d) use the App in any unlawful manner, for any unlawful purpose, or in any manner inconsistent with these Terms, or act fraudulently or maliciously, for example, by hacking into or inserting malicious code, such as viruses, or harmful data, into the App or any operating system;
 - (e) use the App in any way that could damage, disable, overburden, impair or compromise our systems or security or interfere with other users; and
 - (f) use the App on any device that has been modified (jail-broken or rooted) from its original factory state.

- 2.2 All claims, damages and costs (including data and roaming charges) related to your use of the App, information provided by you, breach by you of these Terms, any third party agreements, and any intellectual property or other right of any person are also your sole responsibility.
- 2.3 This App requires a smartphone device with a minimum operating system of:
- (a) Android 7.0 and up; or
 - (b) Apple iOS 8.0 and up.
- 2.4 By using the App, you agree to us collecting and using technical information about the devices you use the App on and related software, hardware and peripherals to improve our offering to you.
- 2.5 You must be at least 18 years of age and resident in the UK to use the App. If you are under the age of 18 your parent or guardian should use the App on your behalf.
- 2.6 We recommend that you back up any content and data used in connection with the App.

3 Suspension of the App

- 3.1 There may be times where we need to suspend your access to the App and we will notify you of this. We may block access to the remote monitoring data sharing function within the App if the wrong login details are repeatedly entered. If this happens, we will give you instructions to restore access.
- 3.2 We may also need to temporarily suspend access to carry out system changes, improve security or until you have downloaded the most recent version of the App.

4 Location permission

- 4.1 Location 'permission' is a requirement for Bluetooth LE and is necessary in order for the App to connect to your spirometer, oximeter and other devices. In order to use the services provided by the App, location permission must be granted in the device settings. No data regarding your location is recorded or stored by the App.

5 Third party websites, software or apps

- 5.1 The App may offer access to other independent third party websites, apps, software or services which are not provided by us. We are not responsible for these nor have we checked their content. Following links to these will be at your own risk and we are not responsible or liable for any damages that you incur. We recommend that you read the relevant terms, privacy and cookies policy pages for these third party websites, apps, software or services before using them.

6 No Guarantees

- 6.1 We have taken reasonable steps to ensure the App is safe and secure but we provide the App "as is". This means, we cannot guarantee that access will be uninterrupted or that there will be no delays or failures. We also cannot guarantee that viruses and other destructive properties will not be transmitted to your device or that your device will not be damaged while using the App. If you suffer loss and/or damage to your data, software, device, digital content and/or other equipment because we do not take reasonable steps, then we will be liable.

6.2 We have also taken reasonable steps to ensure the accuracy, currency and completeness of the information contained in the App, but we provide it "as is", "as available" and we do not give or make any warranty or representation of any kind, express or implied. If you suffer loss and/or damage as a result of your use of or reliance on the information contained in the App because we do not take reasonable steps, then we will be liable.

6.3 Otherwise, we are not responsible if you incur any loss as a result of using the App or your reliance on the information contained in the App.

7 Our Liability

7.1 We do not exclude or limit in any way our liability to you where it would be unlawful to do so. This includes liability for death or personal injury caused by our negligence or the negligence of our employees, agents or subcontractors or for fraud or fraudulent misrepresentation.

7.2 We do not accept any responsibility to you if you are unable to access the App due to there being no or limited WLAN connection or internet connectivity being available through your mobile device.

7.3 We are not responsible for events outside our control. If our provision of the App is delayed by an event outside our control then we will contact you as soon as possible to let you know and we will take steps to minimise the effect of the delay. Provided we do this we will not be liable for delays caused by the event.

7.4 We are responsible for damage to your property if digital content we have supplied via the App damages a device or digital content belonging to you. We will either repair the damage or pay you compensation. However, we will not be liable for damage which could have been avoided by following our advice to apply an update to the App, or for damage that was caused by you failing to correctly follow installation/download instructions or your unlawful use of the App.

8 Intellectual Property Rights

8.1 All intellectual property rights in the App throughout the world belong to us (or our licensors) and the rights in the App are licensed (not sold) to you. You have no intellectual property rights in, or to, the App other than the right to use the App in accordance with these Terms.

9 Your Data Privacy

9.1 Under data protection laws, we are required to provide you with certain information about how we process your personal data and your rights in relation to your personal data. This information is provided in our App Privacy Policy. Please contact your clinician for information about how they will use your personal data that is shared with them through the App.

9.2 Please be aware that internet transmissions are never completely private or secure and that any message or information you send using the App may be read or intercepted by others, even if there is a special notice that a particular transmission is encrypted.

10 Termination

10.1 We may end your rights to use the App by contacting you at any time (and at our discretion) if you have breached these Terms.

10.2 We may end your rights to use the App if Apple Inc. (**Apple**) or Google LLC (**Google**) withdraws the App from their respective app store websites or if we need to withdraw the App for any legal or regulatory reason. If we have to end these Terms, we will notify you.

10.3 You can end these Terms by deleting the App from your device at any time. You should delete the App from your device if your Terms are terminated.

11 Changes to these Terms

11.1 We may need to change these Terms to reflect changes in law or best practice or to deal with additional features which we introduce. You should check the Terms regularly for any updates as these will take effect automatically. If you object to the updated Terms, you should delete the App and stop using it.

12 Updates to the App

12.1 From time to time we may automatically update the App to improve performance, enhance functionality, reflect changes to the operating system or address security issues. Alternatively, we may ask you to update the App. If you choose not to install such updates or if you opt out of automatic updates, you may not be able to continue using the App.

13 General points to note

13.1 These Terms are between Magic Bullet and you only. We and not Apple are responsible for the App and its content, including:

- (a) product liability claims;
- (b) any claim that the App fails to conform to any applicable legal or regulatory requirement;
- (c) claims arising under consumer protection, privacy, or similar legislation; and
- (d) if the App or your possession and use of the App infringes a third party's intellectual property rights, the investigation, defence, settlement and discharge of any such claim.

13.2 Neither Apple nor any other provider has any responsibilities or obligations to you in relation to the App and won't provide any maintenance or support services.

13.3 To the maximum extent permitted by law, Apple has no warranty obligations with respect to the App and any other claims, losses, liabilities, damages, costs or expenses attributable to any failure to conform with any warranty, will be our sole responsibility.

13.4 You represent and warrant that you are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a 'terrorist supporting' country and you are not listed on any U.S. Government list of prohibited or restricted parties.

13.5 We may transfer our rights and obligations under these Terms to someone else. We will tell you if we do this. You can't transfer any of your rights and obligations under these Terms to anyone else.

13.6 Apple and its subsidiaries will be third party beneficiaries to and may enforce any of the rights in these Terms against you.

- 13.7 If you use the App outside the UK we won't be liable to you if this does not comply with local laws.
- 13.8 If any part of these Terms becomes invalid, illegal or unenforceable, this won't affect the remaining Terms.
- 13.9 Nothing in these Terms will reduce your statutory rights. All exclusions of liability apply only as far as the law permits.

14 Applicable law

- 14.1 These Terms are governed by English law and you can bring legal proceedings in respect of any claim you may have relating to the App or these Terms in the courts of England.

15 How to contact us

- 15.1 If you want to learn more about the App or have any problems, please refer to our support resources at <https://magicbullet.co.uk/project-breathe-user-guide>.
- 15.2 If you would like to contact our customer service team, please contact us by email on Contact@magicbullet.co.uk or by following the link to <https://magicbullet.co.uk/contact>.