



## Terms of Service

Thank you for using HeadApp! HeadApp is created by HelferApp AG ("HelferApp" or "we"). These Terms of Service ("TOS") govern the use of HeadApp online at headapp.com and on PCs and mobile devices (collectively, "HeadApp").

These TOS represent a binding contract between you and HelferApp AG, and by creating an account or otherwise accessing HeadApp, you expressly agree to be bound by them, INCLUDING THE AGREEMENT TO ARBITRATE AND WAIVER OF CLASS ACTION CLAIMS CLAUSE CONTAINED IN SECTION 10. The TOS incorporate the provisions of the Privacy Policy and Payment Policy, so please review them carefully as well. If you do not agree to be bound by the TOS, you may not use or purchase HeadApp.

1. Your Account Information and Email
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1. Your Account Information and Email

HeadApp provides a personalized content and training experience. When you create an account, we require you to provide information about yourself, including your email address and a password ("Account Information").

Some HeadApp features either now or in the future may allow you to post or submit content and materials for publication on HeadApp ("Your Content"). You own any intellectual property rights to Your Content, but you agree that we can use, reproduce, modify, adapt and publish Your Content for purposes of enabling us to offer HeadApp or the features you have elected to use. You are responsible for Your Content, and acknowledge that once published, we cannot always remove it.

You agree that we may send communications to your email address for customer service, confirmations, newsletters, product offers and other matters.

You may choose to opt out of much of this email correspondence through your Account Settings pages or by using the links at the bottom of our emails.

Please note that even if you opt out, we'll still send you account-related emails, such as purchase confirmation and password reset emails.

2. Intellectual Property

HeadApp is protected by German and international intellectual property laws and you agree to abide by them. Without our prior written consent, you may not download, copy or store HeadApp content in any form outside of HeadApp and you may not modify, publish, transmit, participate in the transfer or sale of, reproduce, create derivative works based on, distribute, or perform any HeadApp content. You

agree that all data and algorithms in our program files and associated servers are trade secrets. You agree to comply with reasonable written requests from us to help us in protecting our proprietary and intellectual property rights in HeadApp. All intellectual property rights in HeadApp are, as between you and HelferApp, the sole and exclusive property of HelferApp.

Some HeadApp features either now or in the future may allow you to post or submit content and materials for publication on HeadApp ("Your Content"). You own any intellectual property rights to Your Content, but you agree that we can use, reproduce, modify, adapt and publish Your Content for purposes of enabling us to offer HeadApp or the features you have elected to use. You are responsible for Your Content, and acknowledge that once published, we cannot always remove it.

We appreciate when you provide us feedback through customer service or by email or social features, but we may use any feedback, comments, or suggestions without any obligations to you.

### 3. Your License to Use HeadApp

We are providing you with access to HeadApp pursuant to a limited, non-exclusive, non-sublicensable, non-transferable, revocable license. You can use HeadApp for personal, non-commercial use only, and subject to the TOS. This license is available to you as long as you are not barred from HeadApp by applicable law and your account is not terminated by us or by you. If the TOS are not enforceable where you are located, you may not use HeadApp. HelferApp reserves all right, title, and interest not expressly granted under this license to the fullest extent possible under applicable laws.

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### 4. Canceling Your Account

While we hope you enjoy using HeadApp, you may cancel your account at any time by contacting our customer support team. For information about the availability of refunds, please review our Payment Policy.

### 5. Restrictions and Prohibited Uses

HeadApp is used by many people, and we are proud of the trust our users place in us. We expect, in turn, that our users do not misuse our products and services. Except with our written permission, you shall not:

- Attempt to impersonate another person or use another person's HeadApp account information without authorization;
- Use or distribute HeadApp for your own scientific or clinical research purposes;
- Violate or attempt to violate HeadApp's security features, including logging into a server that you are not authorized to access, or probing the vulnerability of HeadApp systems and networks;
- Redistribute, decompile, reverse engineer, publish, or copy HeadApp, including cracking its program files;
- Use HeadApp for the purpose of creating a product with a substantially similar look, feel or design;
- Access or search HeadApp by any means other than our publicly supported interfaces (for example, "scraping");
- Interfere with others' use and enjoyment of HeadApp;
- Use HeadApp or any trademarks, game names, trade names, service marks, copyrights, or logos of HelferApp, in unsolicited mailings, spam material, contests or surveys, or to create the impression that such items are associated with you;
- Violate any third party's rights, including intellectual property or privacy rights;
- Threaten, stalk, harm, or harass others; or engage in activity in connection that is fraudulent, abusive, defamatory, illegal or otherwise inappropriate.
- Engaging in prohibited uses is grounds for immediate termination of your HeadApp account, and may also subject you to civil or criminal penalties.

## 6. Disclaimers

YOU AGREE THAT USE OF HEADAPP IS AT YOUR OWN SOLE RISK AND THAT HEADAPP IS PROVIDED ON AN "AS IS", "AS AVAILABLE" BASIS, WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED. TO THE MAXIMUM EXTENT PERMITTED BY LAW, HELFERAPP AND ITS AFFILIATES, OFFICERS AND/OR EMPLOYEES EXPRESSLY DISCLAIM ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, REGARDING HEADAPP, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT. Some jurisdictions do not allow the disclaimers in this paragraph, so they may not apply to you.

HELPERAPP STRIVES TO MAINTAIN HEADAPP ON A COMMERCIALY REASONABLE BASIS AND CANNOT GUARANTEE THAT YOU WILL HAVE ACCESS TO HEADAPP AT ALL TIMES.

HEADAPP IS NOT A MEDICAL SERVICE AND IS NOT TO BE USED FOR THE PURPOSE OF SEEKING, AND HEADAPP IS NOT PROVIDING, MEDICAL TREATMENT OR ADVICE.

## 7. Limitation of Liability

IN NO EVENT SHALL HELFERAPP OR ITS AFFILIATES, OFFICERS AND/OR EMPLOYEES BE LIABLE WITH RESPECT TO HEADAPP FOR (I) IN THE AGGREGATE, ANY AMOUNT IN EXCESS OF THE FEES PAID BY YOU TO SUBSCRIBE TO HEADAPP; (II) LOST PROFITS, LOST DATA, OR FAILURE TO MEET ANY DUTY INCLUDING WITHOUT LIMITATION GOOD FAITH AND REASONABLE CARE ARISING OUT OF YOUR ACCESS TO OR USE OF HEADAPP; OR (III) ANY DIRECT, INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER.

YOU AGREE THAT THIS LIMITATION OF LIABILITY REPRESENTS A REASONABLE ALLOCATION OF RISK AND IS A FUNDAMENTAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN HELFERAPP AND YOU. YOU UNDERSTAND THAT HEADAPP WOULD NOT BE PROVIDED WITHOUT SUCH LIMITATIONS. Some jurisdictions do not allow the limitations in this section, so they may not apply to you.

## 8. DMCA Contact

We comply with the provisions of the U.S. Digital Millennium Copyright Act applicable to service providers. If you have any complaints with respect to material posted on HeadApp, you may contact our designated agent by email to [dmca-complaint@headapp.com](mailto:dmca-complaint@headapp.com) or at the following address:

HelperApp AG  
ATTN: DMCA Complaint  
Wildenlohslinie 4  
26160 Bad Zwischenahn  
Germany

You must include the following information in your complaint:

- a description of the copyrighted work or other intellectual property that you claim has been infringed;
- a description of the material that you claim is infringing and where it is located on HeadApp;
- your mailing address, telephone number, and if available, email address;
- a statement by you that you have a good faith belief that the use of the material on HeadApp is not authorized by the copyright owner, its agent, or the law;
- a statement by you that the above information in your notice is accurate and that, under penalty of perjury, you are the copyright or intellectual property owner or authorized to act on behalf of the copyright or intellectual property owner; and
- an electronic or physical signature of the person authorized to act on behalf of the owner of the copyright or other right being infringed.

## 9. Indemnity

You will indemnify and hold harmless HelferApp, its affiliates, officers and/or employees, including by paying costs and attorneys' fees, from any claim or demand made by any third party due to or arising out of your access to HeadApp, Your Content, or the violation of the TOS by you.

## 10. Agreement to Arbitrate and Waiver of Class Action Claims

PLEASE READ THIS SECTION 10 CAREFULLY – IT MAY SIGNIFICANTLY AFFECT YOUR LEGAL RIGHTS, INCLUDING YOUR RIGHT TO FILE A LAWSUIT IN COURT.

If a dispute arises, our goal is to provide you a neutral and cost effective means to resolve it quickly. Most disputes can be resolved informally. Before filing a claim against HelferApp, you agree to try to resolve the dispute by contacting us in writing at HelferApp AG., ATTN: DISPUTE NOTICE, Wildenlohslinie 4, 26160 Bad Zwischenahn, Germany, or by email to [legal-dispute-notice@headapp.com](mailto:legal-dispute-notice@headapp.com). Before we file a claim against you, we agree to contact you at the email address associated with your HeadApp account. If the dispute is not resolved within 30 days of notice, either you or we may bring a formal proceeding pursuant to the following procedures:

A. GENERAL. YOU AGREE THAT YOU AND HELFERAPP WILL RESOLVE THROUGH BINDING ARBITRATION ANY DISPUTE, CLAIM OR CONTROVERSY BETWEEN US ARISING OUT OF OR RELATING IN ANY WAY TO HEADAPP OR YOUR USE THEREOF, INCLUDING THESE TOS (collectively, "ARBITRAL CLAIMS"), with a few exceptions set forth below. The arbitrator, and not any court, shall have exclusive authority to resolve all disputes arising out of or relating to the interpretation, applicability, enforceability, or formation of this Agreement to Arbitrate, including any claim that all or any part of this Agreement to Arbitrate is void or voidable, or whether a claim is subject to arbitration. ARBITRATION IS DIFFERENT FROM COURT. THE RULES, INCLUDING DISCOVERY, ARE DIFFERENT AND NO JUDGE OR JURY IS PRESENT AT AN ARBITRATION. IN SOME INSTANCES, THE COSTS OF ARBITRATION COULD EXCEED THE COST OF LITIGATION, AND THE RIGHT TO DISCOVERY MAY BE MORE LIMITED. THE AWARD IS FINAL AND BINDING AND SUBJECT ONLY TO LIMITED REVIEW BY A COURT. YOU UNDERSTAND THAT, ABSENT THIS MANDATORY PROVISION, YOU MAY HAVE THE RIGHT TO SUE IN COURT AND HAVE A JURY TRIAL.

B. ARBITRATION SERVICES AND RULES. For users in the U.S. Judicial Arbitration and Mediation Services ("JAMS") will administer the arbitration using the JAMS' procedures and rules in effect on the date the Arbitration is filed ("JAMS Rules"). In the event the JAMS Rules are inconsistent with this Agreement to Arbitrate, this Agreement will prevail. JAMS is independent from us, and you may obtain copies of the current JAMS Rules, and other related materials, including forms and instructions for initiating arbitration, by contacting JAMS at 1920 Main Street, Suite 300, Irvine, CA 92614 1-800-352-5267 or [www.jamsadr.com](http://www.jamsadr.com).

C. FILING FEES. If your claim is for US\$7,500 or less, we will reimburse you for the filing fee.

D. LOCATION OF ARBITRATION. If you are living in the U.S. and your claim is for US\$7,500 or less, you may choose whether the arbitration will be conducted solely on the basis of documents submitted to the arbitrator, through a telephonic hearing, or by an in-person hearing as established by the JAMS Rules, and any in-person hearing will be held in the United States county where you live or work, San Francisco, CA, or any other location you and we mutually agree to.

E. SETTLEMENT AWARDS AND FEE REIMBURSEMENT. If you prevail, and the arbitrator issues an award that exceeds our best written settlement offer that we made prior to 30 days into the arbitration (or if we did not make a settlement offer before that point), then we will pay you the amount of the award or US\$7,500, whichever is greater. Also, if you prevail, and the arbitrator issues an award that exceeds our best written settlement offer that we made prior to 30 days into the arbitration (or if we did not make a settlement offer before that point) and the amount of the award is less than US\$7,500, we will reimburse you for arbitration fees and your reasonable attorneys' fees and costs.

F. EXCEPTIONS TO ARBITRAL CLAIMS. As an exception to this Section 10, you may assert claims on an individual basis, if they qualify under applicable rules, in Small Claims court. Also, either you or we may bring claims to enforce intellectual property rights without first engaging in arbitration or the informal dispute resolution described in this Section 10.

G. CLASS ACTION WAIVER. YOU AND HELFERAPP AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. YOU FURTHER AGREE WITH HELFERAPP THAT NEITHER YOU NOR HELFERAPP WILL JOIN ANY ARBITRAL CLAIM WITH THE CLAIM OF ANY OTHER PERSON OR ENTITY IN A LAWSUIT, ARBITRATION OR OTHER PROCEEDING; THAT NO ARBITRAL CLAIM WILL BE RESOLVED ON A CLASS-WIDE BASIS; THAT NEITHER YOU NOR HELFERAPP WILL ASSERT AN ARBITRAL CLAIM IN A REPRESENTATIVE CAPACITY ON BEHALF OF ANYONE ELSE; AND BOTH PARTIES EXPRESSLY WAIVE THEIR RIGHT TO FILE A CLASS ACTION OR SEEK RELIEF ON A CLASS BASIS. If any court or arbitrator determines that the class action waiver set forth in this paragraph is void or unenforceable or that arbitration can proceed on a class basis, then this Agreement to Arbitrate shall be deemed null and void in its entirety and the parties shall be deemed to have not agreed to arbitrate disputes.

H. NO RIGHT TO JURY TRIAL. YOU AND HELFERAPP ALSO HEREBY WAIVE THE RIGHT TO A JURY TRIAL EVEN IF THIS AGREEMENT TO ARBITRATE IS HELD NOT TO APPLY. YOU EXPRESSLY WAIVE YOUR RIGHT TO A JURY TRIAL IN THE EVENT THAT EITHER PARTY SELECTS ARBITRATION TO RESOLVE THE DISPUTE UNDER THIS AGREEMENT.

I. 30 DAY OPT OUT RIGHT. You have the right to opt-out and not be bound by the arbitration and the class action waiver provisions set forth in this Section 10 by sending written notice of your decision to opt-out to the following address: HelferApp AG, ATTN: Arbitration Opt-out, Wildenlohslinie 4, 26160 Bad Zwischenahn, Germany, or by email to [opt-out@headapp.com](mailto:opt-out@headapp.com). For new users, the notice must be sent within 30 days of registering for HeadApp, and for existing users, the notice must be sent within 30 days of the effective date of this policy. If you do not opt-out, you shall be bound to the terms in this Section 10. If you choose to opt-out, HelferApp also will not be bound.

#### 11. General

(a) Severability and Waiver. If any part of the TOS is held invalid or unenforceable, the remaining provisions of the TOS will remain in full effect and an enforceable term will be substituted reflecting yours and our intent as closely as possible. Either party's failure to enforce any term or condition in the TOS is not a waiver of its right to do so later.

(b) Any supplementary agreement requires the written form.

(c) The place of jurisdiction shall be Magdeburg, Germany if the User is a merchant in terms of the German Commercial Code (Handelsgesetzbuch).

(d) The individual pages of the HeadApp Web Site are operated and administered by HelferApp and/or its affiliates. The pages comply with the law applicable in the country where the responsible company has its business residence. HelferApp makes no representation that information, software and/or documentation on the HeadApp Web Site are appropriate or available for viewing or downloading at locations outside such country. If Users access HeadApp Web Site from outside such country, they are exclusively responsible for compliance with all applicable local laws. Access to HeadApp Web Site's information, software and/or documentation from countries where such content is unlawful is prohibited. In this case and where User seeks to do business with HelferApp, the User should contact the HelferApp representative for the particular country for country specific business.

(e) These Terms of Use shall be governed by - and all disputes relating to or in connection with these Terms of Service or their subject matter shall be resolved in accordance with - the laws of Germany, to the exclusion of its conflict of laws rules. The application of the United Nations Convention on Contracts for the International Sales of Goods (CISG) of 11 April 1980 is excluded.

These Terms of Service are valid from Sept, 1<sup>st</sup>, 2017