

# CLEARTRIAGE TERMS OF USE

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## Welcome to ClearTriage!

This website and the associated products and services are provided by Medical Minds LLC dba ClearTriage (“**Company**”, “**we**”, or “**us**”). The following terms and conditions (these “**Terms of Use**”) govern your access to and use of the ClearTriage service, including any content, functionality, and services offered on or through app.cleartriage.com (the “**Service**”), whether as a guest or a registered user.

Please read the Terms of Use carefully before you start to use the Service. **By using the Service, you accept and agree to be bound and abide by these Terms of Use.** For purposes of clarity, “you” and any related terms in these Terms of Use refer to both the individual using the Service and the Organization the individual is working for. If you do not want to agree to these Terms of Use, you must not access or use the Service.

## Disclaimer

We provide triage protocols and care advice handouts, as published by a third-party licensor, via the Service. The protocols and handouts are as up-to-date as is reasonably possible at the time of publication, and are reviewed and updated periodically. However, it is the responsibility of your medical director or medical advisory panel to review and approve these protocols, or to customize the protocols to meet your needs. It is also the responsibility of your medical director or medical advisory panel to regularly review and re-approve any customizations to these protocols.

The contents of these protocols have been reviewed and tested for accuracy, but they are not, and cannot be, perfect. Therefore, we and any applicable licensor disclaim responsibility for any harmful consequence, loss, injury, or damage associated with the use and application of information or advice contained in these protocols.

We and any applicable licensor do not warrant or guarantee the accuracy, safety, efficacy, or completeness of any of the protocols.

Any person, institution, or organization using these protocols assumes full responsibility for acts or omissions arising out of their use or misuse. The user assumes all risks associated with using these protocols and any customizations made to the protocols.

Use of these protocols requires the intellect and judgment of the user. These protocols are most suitable for use by clinically experienced nurses, nurse practitioners, physicians and physician assistants. All licensed health professionals should receive training before using these protocols. Non-licensed and non-health professionals (e.g., secretaries, medical assistants) should not use these protocols.

Using the Service means the user has read and accepts this disclaimer.

## Terms of Sale

We offer subscription services via the Service, which includes access to our triage protocols. By choosing to use the subscription services, you agree to pay us the subscription or usage fees indicated for that

service at that time. You acknowledge that the applicable subscription fees may increase upon renewal. We agree not to apply any increase in our subscription fees to your account except upon renewal at the end of your current monthly or annual term, and we will notify you of any such subscription fee increase at least 30 days prior to the increase taking effect.

Subscription services must be cancelled prior to your monthly or annual renewal in order to avoid payment of the next month's or year's subscription fee. Subscription fees are not prorated or refundable upon cancellation.

Payment may be made by credit card or check.

If you choose to pay by check you must pay subscription fees on an annual basis. Invoices are sent by email approximately 45 days prior to the expiration of the current period, then again approximately 30 days later if payment has not yet been received. Payment must be received by us prior to the expiration of the current period or your service may be terminated and the open invoice cancelled.

If you choose to pay by credit card, payment for subscription services will be charged on the day your free trial period ends and will cover the use of that service for the period indicated. Thereafter, you agree that monthly or annual payments will continue to be charged to your credit card on a recurring basis until you cancel your service. The amount of the monthly or annual recurring charge will be the then current subscription fee applicable to the service you selected.

If your payment method fails or your account is past due, we will notify you in writing and if past due amount is not promptly paid, we reserve the right to either suspend or terminate your services. Any such suspension or termination will result in the cancellation of any promotional programs applicable to your services. You agree to submit any disputes regarding any charge to your account in writing to us within 60 days of such charge, otherwise such dispute will be waived and such charge will be final and not subject to challenge.

### **Intellectual Property Rights and Permitted Usage**

The Service and its entire contents, features, and functionality (including all information, software, text, displays, images, video and audio, and the design, selection and arrangement thereof), are owned by us, our licensors, or other providers of such material and are protected by United States and international copyright, trademark, patent, trade secret, and other intellectual property or proprietary rights laws.

You must not reproduce, distribute, modify, create derivative works of, publicly display, republish, download, store, or transmit any of the material on the Service, except as follows:

- You may copy portions of the triage protocols only to paste into an associated patient's electronic medical record or other system recording that specific triage call. For purposes of clarity, notwithstanding any other provisions of this agreement, you may store such records indefinitely.
- You may make customizations to our protocols or create your own custom protocols using the customization functionality within the Service.
- You may send care advice handouts to your patients only via the Service.

You must not:

- Modify copies of any materials from the Service except as provided within the functionality of the Service.
- Use any materials from the Service to develop, enhance, or otherwise improve another clinical decision support system.
- Distribute care advice handouts other than through the Service and as part of a telephone triage call.
- Delete or alter any copyright, trademark, or other proprietary rights notices from copies of materials from this site.

If you customize a triage protocol that we provide (“**Original Protocol**”), you own the specific changes that you make to that protocol (“**Customizations**”), but the resulting customized triage protocol in its entirety is a derivative work of the Original Protocol, with all applicable rights reserved by us and our licensors except as described herein. For example, if you customize an Original Protocol to add your own triage question, you own the individual question that you added, but you do not own the resulting protocol in its entirety. In order to use an Original Protocol with your Customizations, you must have an active subscription to the Service that provides a license to use the Original Protocol.

ClearTriage also provides the ability for you to create your own protocols from scratch (“**Custom Protocols**”). Custom Protocols that do not derive any content from the triage protocols we provide are your intellectual property and may be used by you outside of the Service.

We will not share your Customizations or your Custom Protocols with any third party without your written permission except as required by law.

If you print, copy, modify, download, or otherwise use or provide any other person with access to any part of the Service in breach of the Terms of Use, your right to use the Service will cease immediately and you must, at our option, return or destroy any copies of the materials you have made. No right, title or interest in or to the Service or any content on the Service is transferred to you, and all rights not expressly granted are reserved by us. Any use of the Service not expressly permitted by these Terms of Use is a breach of these Terms of Use and may violate copyright, trademark, and other laws.

### **Prohibited Uses**

You may use the Service only for lawful purposes and in accordance with these Terms of Use. You agree not to use the Service:

- In any way that violates any applicable federal, state, local or international law or regulation.
- To impersonate or attempt to impersonate us, our employees, another user or any other person or entity.
- To engage in any other conduct that restricts or inhibits anyone's use of the Service, or which, as determined by us, may harm us or users of the Service or expose them to liability.

Additionally, you agree not to:

- Use any automated or manual process to duplicate or distribute any content in the Service, including triage protocols, care advice handouts, and computer code; except as specifically allowed by these Terms of Use.
- Use the Service in a manner that unreasonably burdens the Service or interferes with the ability of other parties to use the Service.
- Attempt to gain unauthorized access to, interfere with, damage, or disrupt any part of the Service including the servers and databases related to the Service.

### **Office Hours Restrictions**

Unless you license an After Hours version of the Service, your right to access or use the Service to take telephone triage calls is limited to Office Hours. For purposes of these Terms of Use, “**Office Hours**” means the hours during which the physical office with which you are affiliated is scheduled to be open and seeing patients, not to exceed 14 hours in any 24-hour period.

However, even if you do not license an After Hours version of the Service, you are permitted to use the Service outside of Office Hours for educational and training purposes or for use by one On Call Staff Member at a time. For purposes of these Terms of Use, “**On Call Staff Member**” is defined as a member of your staff who regularly works at your practice during Office Hours and sometimes takes triage calls outside of Office Hours.

You specifically cannot use the Service to regularly take telephone triage calls in an after hours call center unless you license an After Hours version of the Service.

### **Care Advice Handout Restrictions**

The Service provides functionality that allows you to send care advice handouts to patients by email, text message, or URL link. You must not distribute these care advice handouts other than through the Service as part of a telephone triage call. For example, you may not print the handouts and distribute them to patients at your practice. You also may not maintain the handouts in a separate repository and email them without using the Service.

The Service provides functionality that allows you to send handouts in languages other than English (e.g. Spanish). These handouts are not direct translations of the English handouts but instead provide similar care advice by the same authors that wrote the English handouts used in ClearTriage. If you cannot read the handout in its language, you are responsible for ensuring that the recipient understands that you have not read the handout you are sending, that some information in the handout may not pertain to their situation, and that they should call back if they have questions or concerns about any of the care advice.

### **After Hours International Restrictions**

The After Hours International version of the Service cannot be used to provide triage services to individuals who reside in the United States of America, Canada, the United Kingdom, Australia or New Zealand.

## **Accessing the Service and Account Security**

We reserve the right to withdraw or amend the Service, and any service or material we provide on the Service, at our sole discretion without notice, so long as we do not materially degrade the features or functionality of the Service during the term. We will not be liable if for any reason all or any part of the Service is unavailable at any time or for any period, except to the extent agreed upon in the Service Level Agreement section of this agreement. From time to time, we may restrict access to some parts of the Service, or the entire Service, to users, including registered users. We will make all reasonable business efforts to provide 24 hours advance notice before such events occur.

You are responsible for:

- Making all arrangements necessary for you to have access to the Service.
- Ensuring that all persons who access the Service through your Internet connection are aware of these Terms of Use and comply with them.

To access the Service or some of the resources it offers, you may be asked to provide certain registration details or other information. It is a condition of your use of the Service that all the information you provide on the Service is correct, current and complete. Providing falsified contact information or anonymous email addresses is a violation of these Terms of Use.

If you choose, or are provided with, an account id, password, or any other piece of information as part of our security procedures, you must treat such information as confidential, and you must not disclose it to any unauthorized person or entity. You agree to notify us promptly of any unauthorized access to or use of your account id or password or any other breach of security. You are solely responsible and liable for all activities that occur under your password or account.

We have the right to disable any account id, password, or other identifier, whether chosen by you or provided by us, at any time if, in our opinion, you have violated any provision of these Terms of Use.

## **Service Level Agreement**

In the event of Service Downtime of greater than a half day within any one-day period, we will round the downtime to the nearest day and extend your subscriptions by the number of days of downtime. In the event of Service Downtime of greater than ten business days within any one-month period, rather than having us extend your subscriptions you can choose to terminate your subscriptions and receive a pro-rated refund of the subscription charges for the current period. “**Service Downtime**” is defined as your users being unable to view protocols, select triage questions and care advice, then copy the call note to the computer’s clipboard due to a disruption in our service caused by a problem with ClearTriage or one of our third party service providers with the exception of events beyond our reasonable control.

## **Standalone Triage Protocol Documents as Backup**

Upon your request but at our sole discretion, we may provide you with standalone electronic documents (e.g., PDFs) to allow you to provide triage services in the event that you are unable to access the Service. These documents are the property and confidential information of the Company and are considered part of the Service with all of the rights and restrictions contained within these Terms of Use. They are to be stored and used by you with the same care used to protect your confidential information.

If your subscription ends for any reason, you agree to destroy all copies of such documents and to attest to such destruction in writing to us within 15 days.

### **Update Notifications**

The triage protocols provided in the Service are typically updated annually, though we reserve the right to adjust the schedule as needed. We will provide you with reasonable advance notice and an opportunity to review any changes to the protocols. It is the responsibility of your medical director or medical advisory panel to review these updates, customize the updated protocols as needed, then approve the updates in a timely manner.

### **Recording and Use of Information**

In order to support your reporting within the Service and our monitoring of the Service, the Service may record and store general information about your triage calls. This general call information may include but is not limited to the name of the nurse user, the protocol used, the disposition selected, the positive triage question selected, whether a handout was sent, and the date/time of each of the previous actions. To prevent storing sensitive information, the Service will not record or store the specific care advice recommended, the email or phone number used in sending handouts, or any free text field wherein the nurse user could enter patient information.

We also maintain audit records of changes made using the administrative functions of ClearTriage, such as customizing the protocols or publishing new versions of the protocols.

We may disclose the above information to others with your permission or as required by law. We may also de-identify the above information, then use and disclose de-identified information for any purpose whatsoever including improving our products or creating comparative reports for all users of the Service to compare their usage with that of their peers in aggregate.

### **Reconstruction of Triage Protocol Used**

If requested by you to support compliance or legal needs, we will provide you with the version of a triage protocol or care advice handout that was in use by your users at a particular date and time, including any customizations you made that were published at that time.

### **Trademarks**

Our name, logos, product and service names, designs and slogans are our trademarks or the trademarks of our affiliates or licensors. You must not use such marks without our prior written permission. All other names, logos, product and service names, designs and slogans on the Service are the trademarks of their respective owners.

### **Links from the Service**

If the Service contains links to other sites and resources provided by third parties, these links are provided for your convenience only. We have no control over the contents of those sites or resources, and accept no responsibility for them or for any loss or damage that may arise from your use of them. If you decide to access any of the third party websites linked to the Service, you do so entirely at your own risk and subject to the terms and conditions of use for such websites.

## **Disclaimer of Warranties**

**Your use of the Service, its content, and any services or items obtained through the Service is at your own risk. The Service, its content and any services or items obtained through the Service are provided on an “as is” and “as available” basis, without any warranties of any kind, either express or implied, except as described in the Service Level Agreement section of these Terms of Use. We do not make any warranty or representation with respect to the completeness, security, reliability, quality, accuracy, or availability of the Service. Without limiting the foregoing, we do not represent or warrant that the Service, its content, or any services or items obtained through the Service will be accurate, reliable, error-free, or uninterrupted, that defects will be corrected, that our site or the server that makes it available are free of viruses or other harmful components, or that the Service or any services or items obtained through the Service will otherwise meet your needs or expectations.**

**We hereby disclaim all warranties of any kind, whether express or implied, statutory or otherwise, including but not limited to any warranties of merchantability, non-infringement, and fitness for particular purpose.**

**The foregoing does not affect any warranties which cannot be excluded or limited under applicable law.**

## **Limitation on Liability**

**In no event will we, our affiliates or their licensors, service providers, employees, agents, officers, or directors be liable for damages of any kind, under any legal theory, arising out of or in connection with your use, or inability to use, the Service, any websites linked to it, any content on the Service, or such other websites or any services or items obtained through the Service or such other websites, including any direct, indirect, special, incidental, consequential, or punitive damages, including but not limited to, personal injury, pain and suffering, emotional distress, loss of revenue, loss of profits, loss of business or anticipated savings, loss of use, loss of goodwill, loss of data, and whether caused by tort (including negligence), breach of contract or otherwise, even if foreseeable. For clarity, this includes any damages resulting from the medical decisions made or care advice provided by you even if those decisions are made or advice is provided in conjunction with use of the triage protocols provided by us.**

**In no event shall our aggregate liability arising out of this agreement or your use of the Service, whether in contract, tort or otherwise, exceed the greater of (a) the amount of fees paid by you to use the Service in the twelve months preceding the event that gave rise to the liability, or (b) \$100.**

**The foregoing does not affect any liability which cannot be excluded or limited under applicable law.**

## **Indemnification**

**You agree to defend, indemnify, and hold harmless us, our affiliates, licensors and service providers, and our and their respective officers, directors, employees, contractors, agents, licensors, suppliers, successors, and assigns from or against any claims, liabilities, damages, judgments, awards, losses, costs, expenses, or fees (including reasonable legal fees) arising out of or relating to your violation of these Terms of Use or your use of the Service, including, but not limited to, any use of the Service's content, services, and products other than as expressly authorized in these Terms of Use, your use of any information obtained from the Service, or your customizations of the Service's content. For clarity, this**

includes any claims resulting from the medical decisions made or care advice provided by you even if those decisions are made or advice is provided in conjunction with use of the triage protocols provided by us.

We agree to defend, indemnify and hold harmless you, your affiliates, licensors and service providers, and your and their respective officers, directors, employees, contractors, agents, licensors, suppliers, successors, and assigns from or against any claims, liabilities, damages, judgments, awards, losses, costs, expenses, or fees (including reasonable legal fees) arising out of or relating to a claim that the Service used as permitted violates or misappropriates the intellectual property rights of any third party.

With respect to each third party claim to which a party is entitled to seek indemnification pursuant to these Terms of Use: the indemnitee shall promptly notify the indemnitor of each such claim; the indemnitor shall, at its expense and through counsel of its choice, promptly assume and have sole control over the litigation, defense or settlement of such claim; the indemnitee shall provide at the indemnitor's expense all cooperation reasonably requested by the indemnitor in respect of the defense (including without limitation by providing reasonably required assistance, authorizations and information); the indemnitee shall not agree to any settlement in respect of the matter, without the indemnitor's prior written consent; the indemnitor shall not agree to any settlement in respect of the matter that assigns fault to the indemnitee, without the indemnitee's prior written consent; and all amounts owed by the indemnitor to the indemnitee (if any) shall be paid in full within thirty days after a judgment determining the amount owed is rendered, or after a final settlement or agreement as to the amount owed to which the indemnitor agrees.

### **Encourage Telemedicine Option**

We offer you an account option to encourage the use of video visits. If this option is set to Yes, the default behavior of certain dispositions is changed to prompt the nurse to offer a video visit for all positive questions in those dispositions in all protocols in which they are used. This may result in the nurse being prompted to offer a video visit for certain questions for which a video visit is not appropriate. If you choose to use this setting, you acknowledge that this is a known limitation of this Telemedicine Preferences account setting, that this setting modifies the behavior of and clinical instructions presented by the protocols as provided by our licensors, and that your nurses should always utilize their clinical judgement in deciding whether to offer a video visit or not.

### **Third Party Content**

We may provide access within ClearTriage to content created by third parties other than our licensors. This includes additional triage protocols and customizations to the triage protocols we provide ("**Third Party Content**"). We will only make Third Party Content available in your account at your request and it is solely your decision to enable and use such content.

**Third Party Content is not our content and is not reviewed, warranted, or supported by us or our licensors. Your use of Third Party Content is solely an arrangement between you and the applicable provider of the Third Party Content, and we specifically are not a party to any such relationship or agreement.**



## **Definition of You**

If you use the Service in conjunction with the activities of a company, organization, or other legal entity (the “**Organization**”), you represent that either the Organization has already accepted these Terms of Use, or that you are agreeing to these Terms of Use on behalf of the Organization and that you have the authority to bind the Organization to these Terms of Use. For the purpose of these Terms of Use, the word “you” and other related terms refer to both you and any such Organization.

## **Governing Law and Jurisdiction**

All matters relating to the Service and these Terms of Use and any dispute or claim arising therefrom or related thereto (in each case, including non-contractual disputes or claims), shall be governed by and construed in accordance with the internal laws of the State of Colorado without giving effect to any choice or conflict of law provision or rule (whether of the State of Colorado or any other jurisdiction).

Any legal suit, action, or proceeding arising out of, or related to, these Terms of Use or the Service shall be instituted exclusively in the federal courts of the United States or the courts of the State of Colorado in each case located in the City and County of Denver, Colorado, although we retain the right to bring any suit, action or proceeding against you for breach of these Terms of Use in your country of residence or any other relevant country. You waive any and all objections to the exercise of jurisdiction over you by such courts and to venue in such courts.

## **Compliance with Laws**

The owner of the Service is based in the State of Colorado in the United States. Accessing the Service may not be legal in certain countries or jurisdictions. If you access the Service from outside the United States, you do so on your own initiative and are responsible for compliance with local laws and we make no claims that the Service or any of its content is accessible or appropriate for your country or jurisdiction.

You are responsible for complying with all healthcare laws, including The Health Insurance Portability and Accountability Act of 1996 (HIPAA). You acknowledge that the Service includes an unencrypted email and text messaging service that allows you to send care advice handouts to your patients. You represent that prior to sending such emails or text messages to your patients via the Service, you will obtain consent from the patient recipient and advise them of the inherent risks associated with unencrypted messages.

## **Waiver and Severability**

No waiver of or by us or you of any term or condition set forth in these Terms of Use shall be deemed a further or continuing waiver of such term or condition or a waiver of any other term or condition, and any failure of us or you to assert a right or provision under these Terms of Use shall not constitute a waiver of such right or provision.

If any provision of these Terms of Use is held by a court or other tribunal of competent jurisdiction to be invalid, illegal or unenforceable for any reason, such provision shall be eliminated or limited to the minimum extent such that the remaining provisions of the Terms of Use will continue in full force and effect.

### **Changes to the Terms of Use**

We may revise and update these Terms of Use from time to time at our sole discretion. All changes are effective immediately when we post them, and apply to all access to and use of the Service thereafter.

By continuing to use the Service following the posting of revised Terms of Use, you acknowledge that you accept and agree to the changes.

### **Entire Agreement**

With the sole exception of a written addendum to this agreement that is signed by both you and us, these Terms of Use constitute the entire understanding between you and us with respect to the Service and supersedes all other written or oral agreements, purchase order terms, invoice terms, or other similar documents including terms located on your website, between the parties, with respect to the Service. Any such other terms shall be void to the extent they relate to the subject matter of these Terms.

### **Your Comments and Concerns**

The Service is operated by Medical Minds LLC dba ClearTriage, 8476 E Otero Lane, Centennial, Colorado 80112.

All feedback, comments, requests for technical support, and other communications relating to the Service should be directed to: [support@cleartriage.com](mailto:support@cleartriage.com).