

TERMS AND CONDITIONS OF USE

Last updated: 1-16-2015

PLEASE READ THESE TERMS AND CONDITIONS OF USE CAREFULLY BEFORE USING (A) THE WEBSITE OF ENGAGED CARE LLC (“ENGAGED CARE”) HAVING A UNIFORM RESOURCE LOCATOR OF WWW.ENGAGEDPATIENTCARE.COM AND/OR WWW.ENGAGEDPATIENTCARE.NET (THE “SITE”) AND/OR THE WEB-BASED EMAIL SERVER HAVING A UNIFORM RESOURCE LOCATOR OF WWW.SHOWMYCARE.COM THAT ENABLES YOU TO ACCESS AND COMMUNICATE VIA AN EMAIL ACCOUNT PROVIDED AND/OR MANAGED BY ENGAGED CARE LLC (THE “MAIL SERVER”).

These Terms of Use (the “Terms”) set forth the terms and conditions under which individuals residing in the United States may access and use the Site, the Mail Server, and all services provided by Engaged Care relating to the generation, provision and maintenance of email accounts and other electronic communication services (collectively, the “Services”).

By accessing and using the Site, the Mail Server, and Services, you hereby represent and warrant that you understand, agree to, and accept these Terms in their entirety. If you object to anything in these Terms, then do not use the Site, the Mail Server or the Services.

These Terms are subject to change by Engaged Care at any time. We will notify you about significant changes in these Terms, so that you can choose whether to continue using the Services. Any use of the Services by you after the effective date of any changes will constitute your acceptance of such changes.

1. Use of the Services and Content.

(a) The Site is for use by individuals in the United States who are at least 18 years old for informational purposes.

(b) The Mail Server and Services are for use solely by (i) the physicians, physicians assistants, and nurse practitioners for which an Engaged Care licensee has purchased a license (collectively, “Medical Staff”) and who have received user names and passwords for use in connection with the Mail Server (“Credentials”) and (ii) the patients of an Engaged Care licensee, or, if the patients are under 18 years old, their parents or guardians (collectively, “Patients”) who have received Credentials. Medical Staff and Patients shall collectively be referred to as “Authorized Users.” If you are not an Authorized User, then you may not use the Mail Server and Services.

(c) Subject to these Terms, Engaged Care grants each Patient and the Medical Staff involved with the Patient’s medical treatment a worldwide, royalty-free, revocable license to use the Mail Server and Services solely in connection with sending and receiving email communications regarding the Patient’s medical treatment (the “Purpose”).

(d) All text, graphics, images, information, content, and other materials that are accessible to you via the Site, Mail Server, and Services, excluding any User Generated Content as defined in Section 4 (collectively, the “Content”) are protected by copyright under both United States and foreign laws. Ownership of the Content, including the design, organization, layout, and look/feel of the Site and Mail Server, remains with Engaged Care. Content made available via the Site may only be used for information purposes. Content made available via the Mail Server and Services may only be used in connection with the Purpose. Any use of the Content not expressly permitted by these Terms is a breach of these Terms and may violate copyright, trademark, and other laws. Content and features of the Site, Mail Server, and Services are subject to change or termination without notice in the sole discretion of Engaged Care. Content may contain inaccuracies or typographical errors. All rights not expressly granted herein are reserved to Engaged Care.

(e) Engaged Care authorizes you to view, download, or print a reasonable number of copies of the Content solely in connection with the uses authorized in Section 1(d), provided that you include the following copyright notice: “Copyright © 2015, Engaged Care LLC, All Rights Reserved,” as well as any other copyright and proprietary rights notices that are contained in the Content. Except as otherwise expressly permitted herein, you may not copy, download, print, remove, publish, redistribute, modify, transmit, display, sell, prepare derivative works based on, or in any way exploit any Content without the express written permission of Engaged Care and, if applicable, its third-party content providers.

(f) Engaged Care owns and retains all right, title and interest, including, without limitation, all rights of copyright, patent, trademark, trade secret, and any other equivalent rights under applicable law, and all registrations, applications, renewals, extensions, continuations, divisions, reissues, or improvements thereof relating to the foregoing rights (collectively, “Intellectual Property Rights”), in and to the Site, Mail Server, Services and all Content. Except as expressly provided in these Terms, you will not, through use of the Site, Mail Server or Services, by virtue of these Terms or otherwise, acquire any rights whatsoever in the Site, Mail Server, Services or Content.

(g) If you violate any of these Terms, your permission to use the Site, Mail Server, Services, and Content automatically terminates and you must immediately destroy any copies you have made of any portion of the Content.

2. Modifications to the Services. We reserve the right from time to time to temporarily or permanently modify or discontinue, and restrict or block access to the Site, Mail Server, Services or any part thereof without notice. We will not be liable to you or any third party for any such modification, suspension, discontinuance or removal of the Site, Mail Server, Services or any Content contained therein.

3. Prohibited Conduct.

(a) In your use of the Site, Mail Server, and Services, you agree to act responsibly in a manner demonstrating the exercise of good judgment. In addition to the foregoing, you agree not to:

- (i) use the Site, Mail Server or Services for any purpose in violation of local, state, national, or international laws;
- (ii) access, use, redistribute, republish or exploit the Content for any purpose other than the explicitly authorized herein;
- (iii) infringe or violate the rights of any third party, including without limitation, intellectual property (i.e., patent, trademark, copyright, etc.), privacy, publicity or contractual rights;
- (iv) engage in spidering, “screen scraping,” “database scraping,” harvesting of e-mail addresses, wireless addresses or other contact or personal information, or any other automatic means of obtaining lists of users or other information from or through the Site, Mail Server or Services, including without limitation any information residing on any server or database connected to any of the foregoing;
- (v) interfere with, interrupt, damage, disable, overburden, or impair the Site, Mail Server or 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 or electronic mail address information or similar methods or technology;
- (vi) attempt to gain unauthorized access to other computer systems through the Site, Mail Server or Services;
- (vii) alter information on or obtained from the Site, Mail Server or Services;

- (viii) use the Site, Mail Server or Services to transmit or receive illegal, pornographic, sexually explicit or derogatory material;
- (ix) use the Site, Mail Server or Services to harass, stalk, intimidate or threaten any person; or
- (x) assist any third party in doing any of the foregoing.

(b) You further agree that you shall not attempt (or encourage or support anyone else's attempt) to circumvent, reverse engineer, decrypt, or otherwise alter or interfere with the Site, Mail Server, Services or any Content, or make any unauthorized use thereof. You agree that you shall not use the Site, Mail Server or Services in any manner that could damage, disable, overburden, or impair the Site, Mail Server or Services or interfere with any other party's use and enjoyment of the any of the foregoing.

4. User Generated Content. You have the ability to use the Mail Server and Services to compose and send email communications (all content and attachments relating to such email communications shall be collectively referred to as "User Generated Content"). By submitting User Generated Content, you hereby represent and warrant that:

- (i) You own all rights in your User Generated Content and/or you have obtained all necessary rights in your User Generated Content to enable you to grant to Engaged Care the rights in your User Generated Content described herein and to allow Engaged Care to exercise all rights to such User Generated Content;
- (ii) You have paid and/or will pay all fees and other obligations, of any kind, relating to any use of your User Generated Content;
- (iii) Your User Generated Content is not defamatory in nature, and the use of your User Generated Content does not infringe the Intellectual Property Rights, privacy, rights to publicity or any other legal or moral rights of any third party;
- (v) You will not stalk, threaten, harass, or invade the privacy of other users of the Services or others;
- (vi) Your User Generated Content will not constitute, aid, or encourage conduct that is a crime, tort, civil offense, or otherwise violates any laws, rules or regulations.
- (vii) You will not use any trademark or any copyrighted material owned by Engaged Care without a license of other permission to do so.

5. Ownership and License Rights for User Generated Content.

(a) Subject to the non-exclusive rights you grant to Engaged Care under this Agreement, you retain ownership of your copyrights and other intellectual property or proprietary rights in your User Generated Content.

(b) You hereby grant to Engaged Care a worldwide, royalty-free, fully paid up, perpetual, freely-transferable, freely sublicensable, non-exclusive license to use, reproduce, modify, transmit, publicly perform, distribute, display, and create derivative works from your User Generated Content as useful or necessary to operate the Mail Server and provide the Services, in any form, media, or technology.

6. Prohibited User Generated Content. You acknowledge and agree not to submit, generate, and/or transmit any User Generated Content that, in Engaged Care's sole judgment, is detrimental to Engaged Care or other uses of the Mail Server and/or Services, including content that appears to be:

- (i) untrue, misleading, harmful, threatening, abusive, harassing, tortious, defamatory, vulgar, obscene, libelous, invasive to another person's privacy or protected data, hateful, or racially, ethnically or otherwise objectionable;

- (ii) infringing or alleged to be infringing upon a third party's rights, including any patent, trademark, trade secret, copyright, right of publicity, or other proprietary rights of any party, including, without limitation, any content that is the subject of any third party claim of infringement;
- (iii) of a type that you do not have a right to transmit under any law or under contractual or fiduciary relationships, such as inside information and proprietary and confidential information;
- (iv) unsolicited, undisclosed or unauthorized advertising;
- (v) software viruses or any other computer code, files, or programs designed to interrupt, destroy, or limit the functionality of any computer software or hardware or telecommunications equipment;
- (vi) data or information obtained through access that was not authorized by the owner of the data or information, or with respect to which such posting would constitute unauthorized use; or
- (vii) in violation of any applicable local, state, national or international law, regulation, or statute (including export laws).

7. Indemnification. You agree to defend, indemnify, and hold Engaged Care, its officers, directors, employees, agents, licensors, and suppliers, as well as other users of the Site, Mail Server, and Services, harmless from and against any claims, actions or demands, liabilities and settlements including without limitation, reasonable legal and accounting fees, resulting from, or alleged to result from: (i) your use of and access to the Site, Mail Server, and Services; (ii) your use of the Content; (iii) your User Generated Content or (iv) your violation of any of these Terms. This defense and indemnification obligation will survive these Terms and your use of the Site, Mail Server and Services. Engaged Care reserves the right, at your cost, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you, in which event you will fully cooperate with Engaged Care in asserting any available defenses.

8. Disclaimer of Warranties.

(a) YOUR USE OF THE SITE, MAIL SERVER, SERVICES AND THE CONTENT IS AT YOUR OWN RISK.

(b) ENGAGED CARE IS NOT RESPONSIBLE FOR ANY VIRUSES OR OTHER ROUTINES THAT HARM YOUR COMPUTER OR SOFTWARE, WHICH YOU MAY COME IN CONTACT WITH WHILE USING THE SITE, MAIL SERVER OR SERVICES; NOR IS ENGAGED CARE RESPONSIBLE FOR ANY FAILURE, MECHANICAL OR OTHERWISE, OF THE SITE, MAIL SERVER, SERVICES OR ANY CONTENT. FURTHERMORE, WHEN USING THE SITE, MAIL SERVER, AND SERVICES, INFORMATION WILL BE TRANSMITTED OVER A MEDIUM THAT MAY BE BEYOND THE CONTROL AND JURISDICTION OF ENGAGED CARE. ACCORDINGLY, ENGAGED CARE ASSUMES NO LIABILITY FOR OR RELATING TO ANY DELAY, FAILURE, INTERRUPTION, OR CORRUPTION OF ANY DATA OR OTHER INFORMATION OR MATERIAL TRANSMITTED TO OR RECEIVED FROM THE SITE, MAIL SERVER, AND SERVICES.

(c) THE SITE, MAIL SERVER, AND SERVICES ARE PROVIDED ON AN "AS IS" BASIS. ENGAGED CARE, TO THE FULLEST EXTENT PERMITTED BY LAW, DISCLAIMS 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 PARTICULAR PURPOSE.

(d) ENGAGED CARE MAKES NO REPRESENTATIONS OR WARRANTIES, EITHER EXPRESS OR IMPLIED, THAT THE CONTENT IS ACCURATE, RELIABLE, CURRENT OR CORRECT; THAT THE CONTENT WILL BE AVAILABLE AT ANY PARTICULAR TIME OR LOCATION; THAT ANY DEFECTS OR ERRORS WILL BE CORRECTED; OR THAT THE CONTENT IS FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS.

9. Limitation of Liability.

(a) IN NO EVENT SHALL ENGAGED CARE AND ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, ATTORNEYS, LICENSORS, CONTRACTORS, AND AGENTS BE LIABLE FOR ANY DAMAGES (INCLUDING, WITHOUT LIMITATION, DIRECT, INCIDENTAL AND CONSEQUENTIAL DAMAGES, PERSONAL INJURY/WRONGFUL DEATH, LOST PROFITS, OR DAMAGES RESULTING FROM LOST DATA OR BUSINESS INTERRUPTION) RESULTING FROM THESE TERMS, YOUR USE OF OR INABILITY TO USE THE SITE, MAIL SERVER, AND SERVICES OR YOUR USE OF THE CONTENT, WHETHER BASED ON WARRANTY, CONTRACT, TORT, OR ANY OTHER LEGAL THEORY, AND WHETHER OR NOT SHALL ENGAGED CARE AND ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, ATTORNEYS, LICENSORS, CONTRACTORS, AND AGENTS ARE ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SOME STATES/JURISDICTIONS DO NOT ALLOW FOR THE EXCLUSION OR LIMITATION OF LIABILITY IN CERTAIN CIRCUMSTANCES, AND IF THE ABOVE LIMITATION DOES NOT APPLY TO YOU, YOU ACKNOWLEDGE AND AGREE THAT THE MAXIMUM AGGREGATE LIABILITY OF ENGAGED CARE TO YOU ARISING OUT OF THESE TERMS, THE SITE, THE MAIL SERVER, AND THE SERVICES SHALL NOT EXCEED ONE THOUSAND DOLLARS (\$1,000).

(b) Without limiting Section 9(a), any claims arising from the Terms, the Site, Mail Server, Services, and/or the Content must be brought within one (1) year of the date of the event giving rise to such action occurred. Remedies under these Terms are exclusive and are limited to those expressly provided for in these Terms.

10. Privacy Policy. You hereby agree to abide by the terms of the Site's and Mail Server's Privacy Policies, which are located at www.engagedpatientcare.com or www.engagedpatientcare.net or www.showmycare.com and incorporated into these Terms.

11. Acknowledgement. YOU ACKNOWLEDGE AND AGREE THAT THE SITE, MAIL SERVER, AND SERVICES ARE NOT INTENDED TO BE USED BY MEDICAL STAFF AND PATIENTS TO COMMUNICATE IN THE EVENT OF AN EMERGENCY. ACCORDINGLY, YOU AGREE THAT YOU SHOULD NOT USE THE SITE, MAIL SERVER AND SERVICES AS A REPLACEMENT FOR 911 OR ANY OTHER EMERGENCY COMMUNICATION SYSTEM.

12. Rights Reserved. Engaged Care reserves the right to refuse service or terminate your access to the Site, Mail Server, Services or any their respective features, including, without limitation, if Engaged Care believes that your conduct violates applicable laws or is harmful to the interests of Engaged Care.

13. Third Party Sites and Services.

(a) The Site, Mail Server, and Services may contain links to other websites ("Linked Sites"). The Linked Sites are not under the control of Engaged Care and Engaged Care is not responsible for the contents of any Linked Site, including without limitation any link contained in a Linked Site, or any changes or updates to a Linked Site. Engaged Care is providing these links to you only as a convenience, and the inclusion of any link does not imply endorsement by Engaged Care of the site or any association with its operators.

(b) Certain services made available via Site, Mail Server, and Services are delivered by third party sites and organizations. By using any product, service or functionality originating from the Site, Mail Server, and Services, you hereby acknowledge and consent that Engaged Care may share such information and data with any third party with whom Engaged Care has a contractual relationship to provide the requested product, service or functionality on behalf of Engaged Care's customers and users of the Site, Mail Server, and Services.

14. General.

(a) Engaged Care makes no claims that the Site, Mail Server, Services and Content are appropriate or may be downloaded outside of the United States. If you access the Site, Mail Server, Services and Content from outside the United States, you do so at your own risk and are responsible for compliance with the laws of your jurisdiction.

(b) Accessing and/or using the Site, Mail Server and Services 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, on the Site or Mail Server or via the Services, satisfy any legal requirement that such communications be in writing.

(c) In any of the provisions contained in these Terms are determined by a court of competent jurisdiction or by any arbitration panel to which a dispute is submitted to be invalid, illegal, or incapable of being enforced, then such provision, with such modification as shall be required in order to render such provision not invalid, illegal or incapable of being enforced, shall remain in full force and effect, and all other provisions contained in these Terms shall, nevertheless, remain in full force and effect to the fullest extent permissible by law.

(d) No waiver of any of these Terms shall be deemed a further or continuing waiver of such term or condition or any other term or condition.

(e) The provisions of these Terms which by their nature are intended to survive the expiration or termination of these Terms, including without limitation Section 1(d), Section 1(f), Section 1(g), Section 5, Section 7, Section 8, Section 9, Section 11, Section 12, and Section 15 shall survive termination or expiration of these Terms for any reason.

15. Jurisdiction and Governing Law.

(a) All disputes between you and Engaged Care regarding these Terms, the Site, the Mail Server, the Services, and the Content shall be submitted to mandatory, final and binding arbitration before a single arbitrator selected pursuant to the Judicial Arbitration and Mediation Services' Comprehensive Arbitration Rules & Procedures (the "JAMS Rules"), and any such arbitration shall be conducted in Charlotte, N.C. The arbitration shall be conducted in accordance with the provisions of the JAMS Rules in effect at the time of filing of the demand for arbitration.

(b) These Terms are governed by the internal substantive laws of the State of North Carolina, without respect to its conflict of laws principles. To the maximum extent permitted by the governing law, these Terms and the transactions between Engaged Care and you through the Software shall not be governed or affected by any version of the Uniform Computer Information Transactions Act enacted in any jurisdiction.

(c) Any arbitration under these Terms will take place on an individual basis; class arbitrations and class/representative/collective actions are not permitted. THE PARTIES AGREE THAT A PARTY MAY BRING CLAIMS AGAINST THE OTHER ONLY IN EACH'S INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PUTATIVE CLASS, COLLECTIVE AND/ OR REPRESENTATIVE PROCEEDING, SUCH AS IN THE FORM OF A PRIVATE ATTORNEY

GENERAL ACTION AGAINST THE OTHER. Further, unless both you otherwise agree, the arbitrator may not consolidate more than one person's claims, and may not otherwise preside over any form of a representative or class proceeding.

16. Complete Agreement. You acknowledge that by using the site, no confidential, fiduciary, contractually implied, or other relationship is created between you and Engaged Care other than the express contractual relationship provided in these Terms and any other written agreement you may enter into with Engaged Care. These Terms constitute the entire agreement between you and Engaged Care with respect to the use of the Site, Mail Server, Services and Content. A printed version of this agreement and of any notice given in electronic form shall be admissible in judicial or administrative proceedings based upon or relating to this agreement to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form.