

CLEARTRIAGE COVID-19 TERMS OF USE

Last Modified: March 18, 2020

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 COVID-19 service, including any content, functionality, and services offered on or through covid.cleartrriage.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.

Update Notifications

Due to the rapidly evolving nature of the COVID-19 pandemic, these protocols will be updated on an ongoing basis. While we will attempt to notify you by email or within the Service each time that an updated version of a protocol is released, it is your responsibility to review these protocols on an ongoing basis for accuracy and to ensure that they are consistent with your then-current policies and

with any regulations or directives in your jurisdiction related to the handling of suspected or confirmed COVID-19 patients.

Additionally, if you choose to customize a protocol, you will not receive automatic updates to that protocol. When the protocols are updated, you will need to choose whether to revert your customizations in order to use the new version (after reverting you can redo any customizations you wish to keep), or to continue maintaining your customized version of the protocol without the updates.

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.

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.

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.

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.

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.