

## Q Care Terms of Use

Last Updated: September 4, 2020

This Terms of Use Agreement (“**Agreement**”) is a legally binding agreement between you (sometimes referred to as “**you**” or “**your**”) and Q Care Plus, INC. (collectively referred to as “**Q Care**”, “**us**”, “**our**”, or “**we**”) (You and Q Care collectively referred to as the “**Parties**”).

Q Care makes its website and online services (the “**Platform**”) available for your use subject to the terms and conditions in this Agreement.

THE PLATFORM IS NOT INTENDED FOR MEDICAL EMERGENCIES. IF YOU HAVE SUCH AN EMERGENCY, YOU SHOULD CALL 911 OR THE EMERGENCY NUMBER FOR YOUR LOCATION.

BY USING THE PLATFORM, YOU AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT. DO NOT USE THE PLATFORM IN ANY WAY IF YOU DO NOT AGREE TO THIS AGREEMENT.

**IMPORTANT NOTICE:** YOUR USE OF THE PLATFORM IS SUBJECT TO AN ARBITRATION PROVISION IN SECTION 10, REQUIRING ALL CLAIMS TO BE RESOLVED VIA BINDING ARBITRATION.

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### 1. Revisions to this Agreement

We may revise and update this Agreement from time to time and will post the updated Agreement to the Platform. Unless otherwise stated in the amended version of the Agreement, any changes to this Agreement will apply immediately upon posting. Your continued use of this Platform will constitute your agreement to any new provisions within the revised Agreement.

### 2. Your License to Use the Platform

- A. **Ownership.** All written content prepared and posted by Q Care on the Platform and the Platform’s design, layout, look, and appearance, and graphics on the Platform, as well as the trademarks, service marks, and logos contained on the Platform (“**Q Care Content**”) are owned by or licensed

to Q Care and are subject to copyright, trademark, and other intellectual property rights under United States and foreign laws and international conventions. Q Care reserves all rights not expressly granted in, and to, the Platform and the Q Care Content.

- B. **License.** Except as otherwise provided in this Agreement, no part of the Platform and no Q Care Content may be copied, reproduced, uploaded, posted, publicly displayed, transmitted, or distributed in any way to any other computer, server, website, or other medium for publication or distribution or for any commercial use, without our prior express written consent. On the condition that you comply with all your obligations under this Agreement, Q Care grants you a limited, revocable, non-exclusive, non-transferable license to access and use the Platform. Any use of the Platform in excess of this license is strictly prohibited and constitutes a breach of this Agreement, which may result in the termination of your right to access and use the Platform. Your access to the Platform is provided on a temporary basis with no guarantee for future availability. We reserve the right to withdraw or modify any content or services we provide on the Platform without notice. If your access to the Platform is terminated or we modify the Platform or otherwise stop offering the Platform, and if you have subscribed to receive telehealth services through the Platform, we will still make all relevant health records available to you. Such records can be accessed, as described in the relevant Notice of Health Information Privacy Practices.

C. **Restrictions on Your Use of the Platform**

You agree that when using the Platform, you will not:

- i. Delete, modify, or attempt to change or alter any of the Q Care Content or notices on the Platform;
- ii. Introduce into the Platform or Q Care's servers any virus, rogue program, time bomb, drop dead device, ransomware, back door, Trojan horse, worm or other malicious or destructive code, software routines, denial of service attack, or equipment components designed to permit unauthorized access to the Platform or to otherwise harm other users, Q Care Content, or any third parties, or perform any such actions;
- iii. Use the Platform to commit fraud, impersonate another person, or conduct other unlawful activities;
- iv. Copy, modify, create derivative works of, reverse engineer, decompile, disassemble, or otherwise attempt to learn the source code, structure, or ideas upon which the Platform is based;
- v. Use any bot, spider, or other automatic or manual device or process for the purpose of harvesting or compiling information on the Platform for any reason;
- vi. Use any Q Care Content made available through the Platform in any manner that misappropriates any trade secret or infringes any copyright, trademark, patent, rights of publicity, or other proprietary right of any party;
- vii. Submit any content or communications through or relating to the Platform that violates any rights of a third party, including copyright, trademark, patent, rights of publicity, or other proprietary right of any party;
- viii. Submit any content or communications through the Platform that is unlawful, harmful, hateful, threatening, abusive, violent, profane, discriminatory, prejudicial, disparaging, fraudulent, inaccurate, misleading, dangerous, offensive, indecent, harassing, threatening, intimidating, tortious, defamatory, vulgar, obscene, libelous, invasive of another's privacy, or otherwise objectionable;
- ix. Use the information in the Platform to create or sell a similar service;
- x. Create more than one account on the Platform, since creation of more than one account substantially limits our ability to help facilitate the appropriate provision of services to you because we do not

have a way of linking the information in multiple accounts. Your creation of multiple accounts on the Platform could lead to adverse medical events.

Q Care may suspend or terminate, in whole or in part, your access to the Platform if you violate the terms and conditions set forth in this Section.

- D. **Geographic Restrictions.** The Platform is provided for access and use only by persons located in the United States. You acknowledge that you may not be able to access all or some of the Platform outside of the United States and that access thereto may not be legal by certain persons or in certain countries. If you access the Platform from outside the United States, you are responsible for compliance with local laws. Additionally, while you may visit the Platform from anywhere in the United States, you will only be able receive telehealth services through the Platform when you are accessing the Platform from a state where we facilitate the provision of telehealth services.
- E. **User Accounts.** Once you create an account on the Platform, you may not transfer or share your account with anyone. You are responsible for maintaining the confidentiality of your account password and for all activities that occur under your account. If you believe your account has been compromised, you should change your account password immediately and contact us using the information provided below at Section 12 (Contact Us).

### 3. Your Privacy

Our Privacy Policy describes how we collect and use personal information about you collected through the Platform.

### 4. Your Content and Suggestions

The Platform may include features that involve information that you upload, submit, or send through the Platform (“**Your Content**”). This section provides the terms and conditions governing your use of such features. Notwithstanding our rights under this section, our use of Your Content is subject to our Privacy Policy and applicable law.

- A. **License to Your Content.** By submitting Your Content to the Platform, you grant Q Care a worldwide, perpetual, irrevocable, non-exclusive, royalty-free, sub-licensable, and transferable license to use, reproduce, distribute, create derivative works of, adapt, display, and perform Your Content. You represent and warrant that you have the necessary rights to Your Content, including the right to assign or grant a license to your rights in this Agreement.
- B. **Your Responsibility for Your Content.** Your Content is your sole responsibility. Under no circumstances will we be liable in any way for Your Content or for any loss or damage of any kind incurred as a result of the use of any of Your Content. We further reserve the right to monitor, delete or modify any of Your Content in our sole discretion.
- C. **Your Suggestions.** We welcome your comments regarding the Platform and Q Care Content. In addition to the license you grant to us for Your Content, if you elect to provide or make available suggestions, comments, ideas, improvements, or other information or materials (collectively, “**Suggestions**”) to us in connection with or related to the Platform and Q Care’s products and services (including any related technology), whether you send such Suggestions to us through the Platform or through a separate communication channel, you grant us a worldwide, perpetual, irrevocable, non-exclusive, royalty-free, sub-licensable, and transferable license under any and all rights in and to the Suggestions to use, reproduce, distribute, create derivative works of, adapt, display, perform, and otherwise exploit, and to make, have made, sell, offer to sell, and import any products and services incorporating or based on, Suggestions in any manner.

## 5. **Electronic Communications**

You agree to receive communications by email or text message to the email address or mobile phone number (as applicable) you have provided to us. This may include advertising messages sent to a mobile phone through the use of autodialing equipment. You acknowledge that granting us permission to contact you is not a condition for purchasing any property, goods, or services. Message and data rates may apply. If you do not wish to continue receiving such messages, you agree to reply STOP to any mobile message from us in order to opt out. You may receive an additional message confirming your decision to opt out.

## 6. **Not a Medical Provider**

You acknowledge that Q Care, in its support and operation of the Platform, is not a healthcare provider. The only activities or content on the Platform that constitute medical advice or the practice of medicine are your direct interaction through the Platform with a health care provider in the form of personalized messages and interactions and the content and information that is specifically communicated by such personalized messages and interactions.

## 7. **Disclaimer of Warranties**

THE PLATFORM IS PROVIDED “AS IS”. WE DO NOT WARRANT OR MAKE ANY PROMISES REGARDING THE CORRECTNESS, USEFULNESS, ACCURACY, AVAILABILITY, OR RELIABILITY OF (i) YOUR USE OR THE RESULTS OF YOUR USE OF THE PLATFORM; (ii) ANY ADVICE YOU GLEAN FROM THE PLATFORM WHETHER PROVIDED BY US OR A THIRD PARTY; OR (iii) ANY OTHER CONTENT AVAILABLE THROUGH THE PLATFORM. WE DO NOT PROMISE THAT THE PLATFORM WILL BE UNINTERRUPTED OR WILL BE ERROR-FREE, OR THAT ANY DEFECTS WILL BE CORRECTED. THERE IS NO WARRANTY OF ANY KIND, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF TITLE, MERCHANTABILITY, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE. NO ADDITIONAL STATEMENTS OUTSIDE THE TERMS OF THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, STATEMENTS REGARDING CAPACITY, SUITABILITY FOR USE OR PERFORMANCE, WHETHER MADE BY OUR EMPLOYEES OR OTHERWISE, IS A WARRANTY OR PROMISE BY US AND WE HAVE NO RESPONSIBILITY OR LIABILITY FOR ANY SUCH STATEMENTS. WE WILL HAVE NO RESPONSIBILITY FOR THE TIMELINESS, DELETION, MIS-DELIVERY, OR FAILURE TO STORE ANY COMMUNICATION OR CONTENT.

SOME STATES OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES OR LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY MAY LAST. IN THE EVENT THE EXCLUSION OF IMPLIED WARRANTIES OR LIMITATIONS CONTAINED IN THIS AGREEMENT SHALL BE DETERMINED BY A COURT TO BE INVALID OR UNENFORCEABLE, THEN SUCH PROVISIONS SHALL BE REFORMED TO THE MAXIMUM LIMITATION PERMITTED BY APPLICABLE LAW. TO THE EXTENT PERMISSIBLE, ANY IMPLIED WARRANTIES ARE LIMITED TO 90 DAYS FROM THE DATE OF ACCESS.

## 8. **Limitation of Liability**

Q CARE AND ITS SUBSIDIARIES, ITS AFFILIATES, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, AGENTS, BUSINESS PARTNERS, LICENSORS, CONTRACTORS, EMPLOYEES, ASSIGNEES, AND SUCCESSORS-IN-INTEREST (COLLECTIVELY, THE “Q CARE PARTIES”), WILL NOT BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY CLAIMS, DEMANDS OR CAUSES OF ACTION, OR DIRECT OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES OR LOST PROFITS, RELATING TO THIS AGREEMENT, YOUR USE OF THE PLATFORM OR ANY INFORMATION YOU OBTAIN ON IT, OR ANY OTHER

INTERACTION WITH THE PLATFORM AND YOU VOLUNTARILY AND UNEQUIVOCALLY WAIVE ANY LIABILITY OF Q CARE.

YOUR SOLE AND EXCLUSIVE REMEDY FOR DISSATISFACTION WITH THE PLATFORM WILL BE TO STOP USING THE PLATFORM.

IN ANY EVENT, THE MAXIMUM TOTAL LIABILITY OF Q CARE, ITS SUPPLIERS, LICENSORS, PARENT, OR AFFILIATES AND THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, AND ASSIGNEES OR SUCCESSORS-IN-INTEREST, FOR ANY CLAIM WHATSOEVER RELATING IN ANY WAY TO THIS AGREEMENT, INCLUDING CLAIMS FOR BREACH OF CONTRACT, TORT (INCLUDING, NEGLIGENCE OR STRICT LIABILITY) OR OTHERWISE, AND YOUR SOLE REMEDY SHALL BE AN AWARD FOR DIRECT, PROVABLE DAMAGES NOT TO EXCEED THE LESSER OF ONE THOUSAND U.S. DOLLARS (\$1000.00 USD) OR YOUR DIRECT PROVABLE DAMAGES.

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR INCIDENTAL CONSEQUENTIAL, OR OTHER DAMAGES; AS A RESULT, THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT BE APPLICABLE TO YOU, AND THE FOREGOING PARAGRAPH SHALL NOT APPLY TO A RESIDENT OF NEW JERSEY TO THE EXTENT DAMAGES TO SUCH NEW JERSEY RESIDENT ARE THE RESULT OF OUR NEGLIGENT, FRAUDULENT OR RECKLESS ACT(S) OR INTENTIONAL MISCONDUCT.

IF YOU ARE A CALIFORNIA RESIDENT OR COULD OTHERWISE CLAIM THE PROTECTIONS OF CALIFORNIA LAW, YOU FURTHER EXPRESSLY WAIVE THE PROVISIONS OF SECTION 1542 OF THE CALIFORNIA CIVIL CODE, WHICH READS AS FOLLOWS: "A GENERAL RELEASE DOES NOT EXTEND TO THE CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE WHICH, IF KNOWN BY HIM OR HER, MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR." YOU ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND SECTION 1542 OF THE CALIFORNIA CIVIL CODE, AND YOU HEREBY EXPRESSLY WAIVE AND RELINQUISH ALL RIGHTS AND BENEFITS UNDER THAT SECTION AND ANY LAW OF ANY JURISDICTION OF SIMILAR EFFECT WITH RESPECT TO YOUR RELEASE OF ANY CLAIMS YOU MAY HAVE AGAINST Q CARE.

## **9. Indemnification**

To the fullest extent permitted by applicable law, you agree to hold harmless, indemnify, and defend the Q Care Parties from and against any and all claims (including liabilities, damages, losses, costs, expenses, and reasonable attorneys' fees): (a) alleging injury, damage, or loss resulting from your use of the Platform; (b) alleging that Your Content infringes a copyright, patent, or trademark, or misappropriates a trade secret of a third party; (c) relating to any act or omission by you which is a breach of your obligations under this Agreement or applicable law; or (d) otherwise relating to your use of the Platform.

You will have the right to defend and compromise such claim at your expense for the benefit of the Q Care Parties; provided, however, you will not have the right to obligate the Q Care Parties in any respect in connection with any such settlement without the written consent of the indemnified party. Notwithstanding the foregoing, if you fail to assume your obligation to defend or if Q Care elects to defend such claims itself, the Q Care Parties may do so to protect their interests and you will reimburse all costs incurred by the Q Care Parties in connection with such defense.

## **10. Agreement to Arbitrate**

- A. **Choice of Law.** The validity, construction, and effect of this Agreement will be governed by the laws of the U.S. State of Georgia, without giving effect to that state's conflict of laws rules.
- B. **Arbitration Procedure.** All disputes arising out of, or relating to, this Agreement (including formation, performance, breach, enforceability, and validity of this Agreement), our operation of the Platform, or a purchase made through the Platform shall be resolved by final and binding arbitration to be held in the English language in Atlanta, Georgia or another mutually agreed upon location pursuant to the Consumer Arbitration Rules of the American Arbitration Association. The arbitrator, and not any federal, state, or local court or agency, shall have exclusive authority to resolve any dispute relating to the interpretation, applicability, enforceability, or formation of this Agreement, including any claim that all or any part of this Agreement is void or voidable.
- C. **Waiver of Class Actions; Jury Trials.** We each agree that any dispute resolution proceedings will be conducted only on an individual basis and not in a class, consolidated or representative action. If for any reason a claim proceeds in court rather than in arbitration we each waive any right to a jury trial.
- D. **Injunctive Relief.** Without prejudice to the agreement to resolve disputes in binding arbitration set forth in the previous paragraph, either party to this Agreement may obtain preliminary injunctive relief in a court of competent jurisdiction, for the purpose of enforcing any of the terms of this Agreement pending a final determination in arbitration or permanent relief for the purpose of enforcing arbitral awards.

## 11. Miscellaneous Terms

- A. **Complete Agreement.** This Agreement constitutes the entire agreement between you and Q Care relating to your use of, and access to, this Platform and supersedes any prior or contemporaneous agreements or representations. This Agreement may not be amended except as set forth in Section 1 of this Agreement.
- B. **Severability.** If any portion of this Agreement is ruled invalid or otherwise unenforceable, it shall be deemed amended in order to achieve as closely as possible the same effect as originally drafted. Any invalid or unenforceable portion should be construed as narrowly as possible in order to give effect to as much of the Agreement as possible.
- C. **Headings.** Descriptive headings contained in this Agreement are for convenience only and shall not control or affect the meaning or construction of any of this Agreement.
- D. **No Waivers.** Our failure to enforce or exercise any provision of this Agreement or related right will not constitute a waiver of that right or provision.
- E. **No Assignments and Transfers.** No rights or obligations under this Agreement may be assigned or transferred by you, either voluntarily or by operation of law, without our express prior written consent and in our sole discretion.
- F. **Notices.** You can provide any notices to us under this Agreement by e-mail or mail using the contact information provided, below. Unless you tell us otherwise, or the law requires otherwise, you agree to receive all communications from us by e-mail or through posting notices to your account. You are responsible for providing Q Care with up-to-date contact information, which you may do by updating your account information through the Platform or by sending a message to us. You agree that all communications that we send to you electronically satisfy any legal requirement that a communication be in writing. You may print the communications for your records.

## 12. Contact Us

If you have any questions or need to contact us for any reason relating to this Agreement, please e-mail [privacy@qcareplus.com](mailto:privacy@qcareplus.com) or by mail at 1900 N. Pearl St., Ste 1740, Dallas, TX 75201.