

# VISITNG AID LLC Terms & Conditions

*Last updated January 9, 2019*

The Visiting Aid website, [www.visitingaid.com](http://www.visitingaid.com), (the "Website") is an online software web-portal service that gives users ("User(s)", "you", "your") the ability to complete operational tasks involved in the operations and engagement with homecare services agencies, among other related practical applications. These Terms of Service (these "Terms") govern your access to and use of the Website and any products, content or services provided via the Website (collectively the "Service"). Please read these Terms carefully. By accessing or using the Service or otherwise indicating your assent, you agree to be bound by these Terms and our Privacy Policy, found here (our "Privacy Policy"), without any exceptions or conditions. Our Privacy Policy is incorporated herein by reference. If you do not agree to these Terms and our Privacy Policy, you may not use the Service.

## **1. Using the Service**

A. **Who Can Use the Service.** You may use the Website and the Service only if you can form a binding contract with Visiting Aid, LLC ("Visiting Aid", "we", "us", "our") and only in compliance with these Terms and all applicable local, national and international laws and regulations. In order to access some features of the Service, you will have to create an account or authenticate with a third-party authentication. When you create your account with us with any such third-party authentication service, we may receive certain information about you, your profile, or your business. When you create your account, you must provide us with accurate and complete information. You shall not use another User's account without permission. Any use or access of the Service by anyone under the age of 18 is prohibited. If you open an account on behalf of a company, organization, or other entity, then (a) "you" includes you and that entity, and (b) you represent and warrant that you are authorized to grant all permissions and licenses provided in these Terms, and bind the entity to these Terms, and that you agree to these Terms on the entity's behalf.

B. **Limited License.** Subject to these Terms, you are granted a limited, non-sublicensable, non-exclusive, non-transferable and revocable license to access the Website and use the Service (i) if you are, or you are acting in an authorized capacity on behalf of, an entity with a separate, effective written agreement with Visiting Aid governing your use of the Service (each, a "Vendor Agreement"): solely in accordance with the terms of such Vendor Agreement (and to the extent not in conflict with such Vendor Agreement, in accordance with these Terms); and (ii) under all other circumstances and for all other Users: solely for your authorized personal use in accordance with these Terms.

C. **Content.** The Website offers features that enable certain Users to upload Content. "Content" includes the text, software, data, scripts, employee information, patient information, graphics, photos, sounds, music, videos, broadcasts, audiovisual combinations, interactive features, comments, contributions, questions and other materials you may view on, access through, or contribute to, or that comprise, the

Service. Please note the restrictions on your Content in Section 4.

D. Account Use. Users can create an account on the Website for free and use restricted functionality on the website for free for up to 14 (fourteen) days. Users, as applicable, will be able to continue using the website with a paid premium account to unlock special perks, premium access, and additional Website functionality, subject to agreement with the terms and conditions applicable to premium accounts. Accounts have two levels (1) Users who register with us by providing your name, e-mail address and agency information (“Registered Users”) and (2) Users who use their accounts for more than 14 days or who opt to use any of Visiting Aid’s premium paid features or functionalities (“Paid Users”). Registered Users will have restricted functionality within the Website. Paid Users will be able to use all of Visiting Aid’s features and functionalities, subject to the price and the terms and conditions of this Agreement. Registered Users and Editors shall be included in the defined term “Users.” If your account was created in connection with a participating entity (each, a “Vendor”), your use will be subject to the terms and conditions of the applicable Vendor Agreement (and to the extent not in conflict with such Vendor Agreement, in accordance with these Terms).

E. Third-Party Links. The Service may contain links to third-party websites, apps, advertisers, events, activities, offers, or other entities that are not owned or controlled by us. We have no control over, and assume no responsibility for, the content, privacy policies, or practices of any third-party websites or apps. In addition, we will not and cannot censor or edit the content of any third-party website or app. By using the Service, you expressly relieve Visiting Aid from any and all liability arising from your use of any third party’s (including any other User’s) website, content, application, product or service.

F. Account Security. You are solely responsible for the activity that occurs under your account or with your password, and you must keep your account password secure. Please notify us immediately of any breach of security or unauthorized use of your account. While we take commercially reasonable measures to protect the security of your Content and account, we cannot guarantee that unauthorized third parties will not be able to defeat our security measures.

## **2. Restrictions On Your Use**

A. Restriction on Distribution. You shall not distribute in any medium any part of the Service or the Content, without Visiting Aid’s prior written authorization, except directly through the Website solely to the extent authorized by the User who originally submitted such Content, and any person with personally identifiable information embedded in or associated with such Content, and solely in accordance with these Terms. You shall not make copies or translations of the Service, or alter, obscure, or remove the copyright notice on any copy of the Service. You are prohibited from assigning, selling, distributing, leasing, renting, sublicensing, or transferring the Service or this license, and from reverse-engineering, disassembling, or decompiling the Service or otherwise attempting to discover the source code or structural framework of the Service. The foregoing restrictions also apply to any portion of the Service, including any Content.

B. Restriction On Modification. You shall not alter, modify, build upon or block any portion or functionality of the Service.

C. Restriction on Accessing Content. You shall not access Content through any

technology or means other than the Website itself, or via an authorized means designated by Visiting Aid.

D. Restriction On Commercial Use. Except to the extent otherwise expressly set forth in these Terms, in an applicable Vendor Agreement or in writing by Visiting Aid or to the extent otherwise permitted under the authorized use and functionality of the Service, you shall not use the Service for any commercial or competitive uses. Examples of prohibited commercial and competitive uses include, but are not limited to, the following:

- the sale of access to the Service or Content (or any portion thereof); or
- the sale of advertising, sponsorships, or promotions placed on or within the Service or Content.
- the research, observation, or duplication of the Website, Service, or Content to build a service or website that would compete with our Service.

E. Restriction on Use of Communication Systems. Except to the extent otherwise specifically agreed in writing by Visiting Aid or to the extent otherwise permitted under the authorized use and functionality of the Service, you shall not solicit, for commercial purposes, any Users of the Service. Any objectionable User conduct is strictly prohibited, including that you shall not harass, harm, threaten, abuse or impersonate any User or any other person.

F. Restriction on Automated Attacks. You shall not use or launch any automated system, including without limitation, “robots,” “spiders,” or “offline readers,” that accesses the Service in a manner that sends more request messages to Visiting Aid or its service provider’s servers in a given period of time than a human can reasonably produce in the same period by using a single conventional on-line web browser.

G. Restriction On Collection Of Data. You shall not collect, harvest or use any personally identifiable information from the Service, except to the extent authorized by the User who originally submitted such Content, and any person with personally identifiable information embedded in or associated with such Content, and solely in accordance with these Terms. If you are an entity subject to an effective Vendor Agreement, you shall collect, distribute and otherwise use information and data solely in accordance with such Vendor Agreement (and to the extent not in conflict with such Vendor Agreement, in accordance with these Terms). Without limiting any of the foregoing, you understand that Visiting Aid acts in a passive capacity for communications, sharing of data and other content, and other activities among Users, and Visiting Aid shall not be responsible or liable for any acts or omissions of any User.

### **3. Your Use of Content**

In addition to the general restrictions above, the following restrictions and conditions apply specifically to your use of Content.

A. Ownership. The Content, the trademarks, service marks and logos on the Service are owned by or licensed to Visiting Aid, subject to copyright and other intellectual property rights under the law.

B. Reservation of Rights. You shall not download, copy, reproduce, distribute, transmit, broadcast, retransmit, display, sell, license, or otherwise exploit any Content, except for the purposes and to the extent expressly set forth in these Terms, without the prior written consent of Visiting Aid or the respective licensors of the Content. Visiting Aid and its licensors reserve all rights not expressly granted in and to the Service and the

Content.

C. Content Disclaimer. Content from Visiting Aid or any of its representatives is provided to you AS IS and does not constitute advice, legal advice, business advice or medical advice. You may access Content solely for your informational purposes and solely as intended through the provided functionality of the Service and in accordance with these Terms.

You hereby represent, warrant and covenant that you will not rely solely or primarily on the Service (or any Content) when making any decision, or when providing or receiving any advice, products or services. If you use or rely on any Content or any other User (including Vendors), you agree that we are not responsible or liable for any damage or loss caused or alleged to be caused by or in connection with such use or reliance. Your dealings with, or participation in promotions of, any User are between you and such User and are subject to any applicable separate terms or agreements.

D. Security. You shall not circumvent, disable or otherwise interfere with security-related features of the Service or features that prevent or restrict use or copying of any Content or enforce limitations on use of the Service or the Content therein.

E. No Unauthorized Monetization. You shall not serve advertisements against, charge a viewing fee for, or otherwise monetize such Content unless otherwise specifically agreed to by Visiting Aid in writing.

#### **4. Your Content**

A. Submitting Content. Once you have become a User, you may submit Content to the Service. You will have the ability, through the functionality of the Service, to establish which Users may access your Content via the Service, but you understand that once you provide access to your Content to other Users, such Content will become difficult (or impossible) to control, retrieve or destroy, and you hereby grant us permission to share such Content with such Users and to rely on any settings or instructions associated with your account.

B. Responsibility For Your Content. You are solely responsible for your own Content and the consequences of submitting your Content on the Service and you recognize and affirm that the Service is merely providing you the means to produce, store, organize, manipulate and distribute your Content. You hereby represent, warrant and covenant that: (i) you own or have the necessary licenses, rights, consents, and permissions to publish Content you submit; (ii) your Content does not and will not infringe, violate, or misappropriate any applicable law or any third-party right, including any copyright, trademark, patent, trade secret, moral right, privacy right, right of publicity, or any other intellectual property or proprietary right; (iii) your Content does not slander, defame, libel, or invade the right of privacy, publicity or other rights of any person or entity or violate any of our Service-related policies or terms, as we may make available and update from time to time; (iv) your Content does not contain any viruses, adware, spyware, worms, or other malicious code or any content or file that provides a method to access infringing or unauthorized content outside of the Service; (v) your Content, which relates to any User, is accurate, truthful, complete, based on sufficient first-hand knowledge and not misleading and does not involve any conflict of interest; and (vi) your Content does not include any excessive or unauthorized advertisements, promotions or solicitations of business. Any obscene, harmful, abusive, threatening,

infringing, unlawful or otherwise objectionable Content is strictly prohibited. Please promptly report or otherwise identify any objectionable Content or User conduct. We may at any time, and we will take reasonable measures to, block, remove or modify any objectionable Content. You agree that you will follow Federal Trade Commission's disclosure guidelines applicable to your Content. The latest version of these guidelines can be found [here](#).

C. Use of Your Content. By uploading, submitting, emailing, posting, publishing or otherwise transmitting any Content to the Service, you grant Visiting Aid and/or any Users or other third parties Visiting Aid allows or designates a perpetual, irrevocable, worldwide, non-exclusive, royalty-free, sublicensable and transferable license to use, store, reproduce, distribute, modify, prepare derivative works of, publish, transmit, monetize, broadcast and otherwise exploit the Content in connection with the Service or Visiting Aid's (and its successors' and affiliates') business, subject to the terms of our Privacy Policy, provided that Visiting Aid will not (and third party Users and designees are not permitted to) intentionally use your registered trademarks to identify and distinguish its own products or services in violation of such registered trademark rights. For the avoidance of doubt, any revenue collected by Visiting Aid in connection with any advertising or other commercial enterprise related to your Content will be 100% allocated to Visiting Aid and will not be subject to any revenue sharing arrangement, unless otherwise specifically agreed to in writing by Visiting Aid.

If you allow any User to access your Content, you hereby grant each such User a non-exclusive license to access your Content through the Service, and to use, reproduce, distribute, display and perform such Content in accordance with the sharing settings and restrictions, if any, applicable to such Content and in accordance with these Terms.

D. Limitations; Deactivating or Deleting Content. You acknowledge and agree that Visiting Aid may, in its sole discretion, establish and change limits concerning your Content. We reserve the right at any time to block, remove or modify Content for any or no reason without explanation or advance notice to you. Visiting Aid will have no responsibility or liability for Content that is deleted, lost or damaged. You should separately store and back up any Content. You may delete or deactivate Content that you upload to the Service (to the extent you have control over such Content). Visiting Aid may retain server copies of any Content you submit for its internal purposes, even if such Content has been deactivated, deleted or otherwise removed from the Service.

E. Your Responsibility To Third Parties. You shall not post any Content that violates any law or infringes or otherwise violates the rights of any third party.

F. No Endorsement. While Visiting Aid may, at its discretion, promote or otherwise make certain Content more or less visible, Visiting Aid does not endorse any Content available via the Service or submitted to the Service by any User or other licensor, or any opinion, recommendation, or advice expressed therein, and expressly disclaims any and all liability in connection with Content. Visiting Aid does not have any obligation to independently vet any Vendors, including any asserted credentials or claims, and Visiting Aid does not endorse any specific User or Vendor or their respective advice, products or services.

G. Feedback. We value hearing from our Users, and are always interested in learning about ways we can make the Service better. If you choose to submit comments, ideas

or feedback, you agree that we are free to use them without any restriction or compensation to you.

## **5. Termination**

We reserve the right to discontinue or modify any aspect of the Website and/or the Service at any time. We may terminate your account or otherwise suspend your right to use the Service at any time, with or without cause or advance notice to you, including if you are involved with any objectionable Content or conduct. Upon termination or suspension, you continue to be bound by Sections 2-12 of these Terms.

## **6. DMCA**

Notice. If you are a copyright owner or an agent thereof and believe that any Content infringes upon your copyrights, you may submit a notification pursuant to the Digital Millennium Copyright Act (“DMCA”) by providing our Copyright Agent with the following information in writing:

- A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed;
- Identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works at a single online site are covered by a single notification, a representative list of such works at that site;
- Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled and information reasonably sufficient to permit the service provider to locate the material;
- Information reasonably sufficient to permit the service provider to contact you, such as an address, telephone number, and, if available, an electronic mail;
- A statement that you have a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law; and
- A statement that the information in the notification is accurate, and under penalty of perjury, that you are authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

Visiting Aid’s designated Copyright Agent to receive notifications of claimed infringement is:

Attention: Copyright Agent  
support@visitingaid.com

For clarity, only DMCA notices should go to the Copyright Agent; any other feedback, comments, requests for technical support, and other communications should be directed to Visiting Aid’s customer service through support@visitingaid.com. You acknowledge that if you fail to comply with all of the requirements of this Section, your DMCA notice may not be valid.

Counter-Notice. If you believe that your Content that was removed (or to which access was disabled) is not infringing, or that you have the authorization from the copyright owner, the copyright owner’s agent, or pursuant to the law, to post and use the material in your Content, you may send a counter-notice containing the following information to the Copyright Agent:

- Your physical or electronic signature;
- Identification of the Content that has been removed or to which access has been

disabled and the location at which the Content appeared before it was removed or disabled;

- A statement that you have a good faith belief that the Content was removed or disabled as a result of mistake or a misidentification of the Content; and
- Your name, address, telephone number, and e-mail address, a statement that you consent to the jurisdiction of any federal court in the United States, and a statement that you will accept service of process from the person who provided notification of the alleged infringement.

If a counter-notice is received by the Copyright Agent, we may send a copy of the counter-notice to the original complaining party informing that person that it may replace the removed Content or cease disabling it. Unless the copyright owner files an action seeking a court order against the Content provider or User, the removed Content may be replaced, or access to it restored, after receipt of the counter-notice, in our sole discretion.

## **7. Warranty Disclaimer**

YOU USE THE WEBSITE AND THE SERVICE AT YOUR OWN RISK. The Service and all Content are provided on an “as is” basis without warranty of any kind, whether express or implied. VISITING AID SPECIFICALLY DISCLAIMS ANY AND ALL WARRANTIES AND CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT, AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE. Regardless of whether we conduct any background checks or attempt to verify any information or claims, we take no responsibility and assume no liability for any Content that you or any other User or third party posts, uses, shares or transmits using the Service or for any action or omission of any User (including Vendors). You understand and agree that you may be exposed to Content that is inaccurate, graphic, inappropriate for children, or otherwise unsuited to your purpose, and you waive any rights or remedies you may have against Visiting Aid with respect thereto.

## **8. Limitation of Liability**

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, VISITING AID (AND ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS AND THIRD-PARTY CONTRACTORS AND LICENSORS) SHALL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, OR ANY LOSS OF PROFITS OR REVENUES, WHETHER INCURRED DIRECTLY OR INDIRECTLY, OR ANY LOSS OF DATA, USE, GOOD-WILL, OR OTHER INTANGIBLE LOSSES, RESULTING FROM (A) YOUR ACCESS TO OR USE OF OR INABILITY TO ACCESS OR USE THE SERVICE; (B) ANY CONDUCT OR CONTENT OF ANY THIRD PARTY ON THE SERVICE; OR (C) UNAUTHORIZED ACCESS, USE OR ALTERATION OF YOUR TRANSMISSIONS OR CONTENT. IN NO EVENT SHALL VISITING AID’S AGGREGATE LIABILITY EXCEED THE GREATER OF ONE HUNDRED U.S. DOLLARS (U.S. \$100.00) OR THE AMOUNT YOU HAVE PAID US IN THE PAST TWELVE MONTHS. YOU HEREBY WAIVE AND RELINQUISH ALL RIGHTS AND BENEFITS UNDER ANY LAW OF ANY JURISDICTION WITH RESPECT TO THE RELEASE OF ANY UNKNOWN OR UNSUSPECTED CLAIMS

YOU MAY HAVE AGAINST VISITING AID (OR SUCH RELATED INDIVIDUALS OR ENTITIES), INCLUDING, IF YOU ARE A CALIFORNIA RESIDENT, CALIFORNIA CIVIL CODE SECTION 1542, WHICH SAYS THAT A GENERAL RELEASE DOES NOT EXTEND TO 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.

The Service is hosted and offered by Visiting Aid from its facilities in the United States of America. We make no representations that the Service is appropriate or available for use in other locations. Those who access or use the Service from other jurisdictions do so at their own volition and are responsible for compliance with all applicable laws and regulations, including export control laws and regulations.

### **9. Indemnity**

To the maximum extent permitted by applicable law, you agree to defend, indemnify and hold harmless Visiting Aid, its affiliates, officers, directors, employees and agents, from and against any and all claims, damages, obligations, losses, liabilities, costs or debt, and expenses (including but not limited to attorney's fees) arising from: (i) all matters related to your use of or access to the Service, or any use of or access to your account (regardless of whether you authorized such use); (ii) your violation of any term of these Terms; (iii) your violation of any third-party right, including without limitation any copyright, property, or privacy right; (iv) any claim that your Content caused damage to a third party (v) any fees or fines that we may face from the Federal Trade Commission as a result of your Content. This defense and indemnification obligation will survive these Terms and your use of the Service.

### **10. Assignment**

These Terms, and any rights and licenses granted hereunder, shall not be transferred or assigned by you, but may be assigned by Visiting Aid without restriction. Any purported transfer or assignment in violation of the foregoing is null and void.

### **11. Disputes**

For any dispute you have with Visiting Aid, you agree to first contact us and attempt to resolve the dispute with us informally. Nothing in this Section shall prevent either party from seeking injunctive or other equitable relief from the courts for matters related to data security, intellectual property or unauthorized access to the Service. ALL CLAIMS MUST BE BROUGHT IN THE PARTIES' INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING, AND, UNLESS WE EXPRESSLY AGREE OTHERWISE IN WRITING, MORE THAN ONE PERSON'S CLAIMS SHALL NOT BE CONSOLIDATED. YOU AGREE THAT, BY ENTERING INTO THESE TERMS, YOU AND VISITING AID ARE EACH WAIVING THE RIGHT TO A TRIAL BY JURY OR TO PARTICIPATE IN A CLASS ACTION. YOU AND VISITING AID AGREE THAT ANY CAUSE OF ACTION ARISING OUT OF OR RELATED TO THE SERVICES MUST COMMENCE WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES. OTHERWISE, SUCH CAUSE OF ACTION IS PERMANENTLY BARRED.



## **12. General**

You agree that: (i) the Service shall be deemed solely based in the United States; and (ii) the Service shall be deemed a passive app that does not give rise to personal jurisdiction over Visiting Aid, either specific or general, in jurisdictions other than the United States. These Terms shall be governed by the internal substantive laws of the State of New York, without respect to its conflict of laws principles. We each agree to submit to the personal jurisdiction of a court of competent jurisdiction located in New York for any action arising out of or related to these Terms.

These Terms, together with our Privacy Policy and any other terms, policies or legal notices published by Visiting Aid on the Service, shall constitute the entire agreement between you and Visiting Aid concerning the Service.

If any provision of these Terms is deemed invalid by a court of competent jurisdiction, the unenforceable portion must be construed as nearly as possible to reflect the original intent of the parties, and the invalidity of such provision shall not affect the validity of such provision in other jurisdictions or circumstances or the validity of the remaining provisions of these Terms, which shall remain in full force and effect.

No waiver of any term of these Terms shall be deemed a further or continuing waiver of such term or any other term, and our failure to assert any right or provision under these Terms shall not constitute a waiver of such right or provision.

You may not amend these Terms. We may revise these Terms from time to time, effective immediately upon posting, and the most current version will be available via the Website. If a revision, in our sole discretion, is material, we will notify you, using whatever form and means of notification as we choose, including electronic notice. You hereby consent to receiving any notices from us, and communicating with us, via electronic means. By continuing to access or use the Service after revisions become effective, you agree to be bound by the revised Terms. If you do not agree to the revised Terms, you stop using the Service.

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