

SamaCare Terms of Service

Last Updated April 2019

*****IMPORTANT, PLEASE READ THESE ONLINE TERMS OF SERVICE CAREFULLY.**

SamaCare Inc (“SamaCare”, “we”, “our” or “us”) provides the SamaCare service (defined below) available through its site for eligible users conditioned on acceptance of these Terms of Service.

1. Acceptance of Online Terms of Service

These Online Terms of Service (“**Online Terms of Service**”) are a legal agreement between you (“**you**” or “**your**”) and SamaCare.

If you are eligible to be a SamaCare member, and desire to obtain a license to access and use our SamaCare Service, you will be required to demonstrate your agreement to these Online Terms of Service by clicking on the “I Agree” button available through our member sign in page. By clicking on the “I Agree” button, you acknowledge that you have read these Online Terms of Service, understand them and agree to be bound by these Online Terms of Service. If you do not agree to be bound, you should not click on “I agree”, and you will not be provided access to the SamaCare Service.

Please also review our [Privacy Policy](#), as it contains important information regarding the collection, the ability to disclose and the protection of your information. Your agreement to these Terms of Service includes your agreement to our Privacy Policy. If there is a conflict between these Terms of Service and the Privacy Policy, the Privacy Policy shall have precedence with respect to the subject matter covered by it..

NOTE THAT, SamaCare may make changes to the SamaCare Service or these Terms of Service at any time. We encourage you to review our site and these Terms of Service regularly for any such changes. Your continued access to or use of the SamaCare Service shall be deemed your acceptance of these changes and the reasonableness of these standards for notice of changes.

2. MEDICAL WARNING

The SamaCare Service has been created by SamaCare to provide administrative assistance for health care providers that should never be construed as specific instructions for individual patients. Without limiting the foregoing, the information on the SamaCare Service should not be considered complete and does not cover all diseases, ailments, physical conditions or their treatment. Nothing on the SamaCare Service is intended to substitute for proper medical advice, diagnosis, or treatment. The SamaCare Service is not intended and must not be interpreted as the rendering of medical, nursing, or professional health care advice or services, or the practice of medicine, nursing, or professional health care in any jurisdiction.

NOTHING AVAILABLE THROUGH OR ON THE SAMACARE SERVICE SHOULD BE CONSTRUED AS MEDICAL ADVICE. THE SAMACARE SERVICE DOES NOT OFFER MEDICAL DIAGNOSIS OR PATIENT SPECIFIC TREATMENT ADVICE

3. Eligibility to use the SamaCare Service; Registration

SamaCare provides to eligible users information and services to assist in completing administrative tasks related to health care practice management.

If you are eligible to use the SamaCare Service, prior to first using it you must set up an account with SamaCare by completing SamaCare's registration process. As part of the registration process you must provide SamaCare with complete and accurate information as prompted by the applicable registration form. You also will choose a password and a user name. You agree that all data supplied by you in establishing your account is accurate and complete, that you will maintain and promptly update the data, and that you consent to the storage of your data in the SamaCare Service. You warrant that the person clicking on the "I Agree" button is the person whose data is supplied as part of registration hereunder. If SamaCare has reasonable grounds to suspect that your data is inaccurate or incomplete, SamaCare may suspend or terminate your account, disable your password and refuse any and all current and future use of the SamaCare Service, without prior notice. You are entirely responsible for maintaining the confidentiality of your user name and password. You agree to immediately notify SamaCare of any known or suspected unauthorized use of your password, user name or account or any other breach of security. To the maximum extent permitted by applicable law, SamaCare will not be liable for any loss that you may incur as a result of someone else using your password, user name or account, either with or without your knowledge, or for any inaccuracies in your, or incomplete, data. However, you could be held liable for losses incurred by SamaCare or a third party due to someone else using your account, user name or password.

4. Permitted Use of the SamaCare Service

If you are eligible, have registered with SamaCare as set forth above, have agreed to these Online Terms of Service and your rights have not been terminated, SamaCare will provide you access to the SamaCare Service. You must retain all copyright and/or other proprietary notices that are on the downloads/print copies of the content/data. You are solely responsible for the use and disclosure of any downloads/print copies of the content/data you make from use of the SamaCare Service. You understand that your access rights are personal, nonexclusive, and not transferable, that your rights will be terminated by SamaCare if you do not abide by these Terms of Service, and that you may have liability to SamaCare and third parties if you misuse the SamaCare Service.

In compliance with the Children's Online Privacy Protection Act ("COPPA") the Company does not knowingly allow access to the Site, Service or Content to persons under age 13. If you are under age 13, you are not authorized to post any personal information about yourself to the Site or provide any personal information about yourself to Company. If we learn that we have collected personal information from a child under age 13, we will delete that information as quickly as possible.

You represent and warrant that you are at least 13 years of age or older. Your use and our consent to your use of this Site must be in accordance with these Terms of Service.

5. Restrictions

SamaCare reserves all rights in the SamaCare Service not granted in these Terms of Service. Without limiting the foregoing, by using the SamaCare Service you agree not to:

- translate, modify or create derivative works of the SamaCare Service;
- upload, download, recreate, display, perform, post, reproduce or copy the SamaCare Service, except to the extent permitted herein;
- disclose, publish, distribute, sell, assign, lease, sublicense, market or transfer the SamaCare Service;
- attempt to derive the source code, source files or structure of the software contained in the SamaCare Service by reverse engineering, disassembly, decompilation or any other means;
- use the SamaCare Service to create a service bureau or for any other use involving processing of data for other persons or entities;
- use the SamaCare Service except in accordance with all applicable law;
- introduce into the SamaCare Service any “malware,” such as, but not limited to, viruses, worms, and Trojan Horses;
- use deep-links, page scrapes, web crawlers, web robots, spiders, wanderers, web scutters, ants, automatic indexers, bots, worms, or other such devices, or programs, algorithms or methodologies which do the same things in connection with the SamaCare Services, or use other automated processes to access or use the SamaCare Service
- attempt to access the accounts of any user of the SamaCare Service other than your own account;
- post, transmit or link from any unlawful, infringing, misleading, deceptive, threatening, libelous, defamatory, plagiarized, fraudulent, harassing, obscene, discriminatory, inflammatory, pornographic or profane material, SPAM or any material that could constitute or encourage conduct that would be considered a criminal offense, give rise to civil liability, or would otherwise violate applicable law;
- use the SamaCare Service in any manner that could damage, disable, undermine, overburden, or impair the SamaCare Service or the servers on which it runs or interfere with any other party’s use of the SamaCare Service;
- obtain or attempt to obtain any content through any means not intentionally made available or provided for through the SamaCare Service; or
- use any of the logos, trademarks, service marks, or other indicators of origin appearing on the SamaCare Service.

6. Data

You hereby grant us and others, including third parties, as provided in the Privacy Policy, a right and license to use, copy and display all data you input into the SamaCare Service for the purposes of making the SamaCare Service available hereunder, for purposes of improving the SamaCare service and as otherwise described in the Privacy Policy. You represent and warrant that you have all necessary rights and licenses to grant the rights granted herein and to use and display all data as contemplated herein.

7. Copyrights, Trademarks and Other Proprietary Rights

You understand that SamaCare and its licensors retain all ownership rights in the SamaCare Service and that you do not receive any ownership rights or license rights (except as set forth herein) by accessing or using the SamaCare Service or consenting to these Terms of Service. All trademarks, service marks and trade names are owned by SamaCare or other respective owners.

The entire content of the SamaCare Service including, but not limited to, text, design, software, photography, video, graphics, music, sound, information and the selection, coordination, arrangement, and enhancement thereof, is protected under the copyright laws of the United States of America (“USA”), international treaties and other intellectual property laws (including without limitation the copyright in the selection, coordination, arrangement and enhancement of all content).

8. Monitoring

SamaCare may electronically monitor the SamaCare Service and may disclose any data, records, or electronic communication of any kind solely pursuant to the terms of the Privacy Policy.

9. Disclaimer

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SAMACARE SERVICE IS PROVIDED “AS IS” AND “AS AVAILABLE” WITHOUT ANY WARRANTIES OF ANY KIND, AND SAMACARE AND ITS LICENSORS DISCLAIM ALL WARRANTIES, EXPRESS AND IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NONINFRINGEMENT, AND WARRANTIES ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE AND USAGE OF TRADE. YOUR USE OF THE SAMACARE SERVICE IS SOLELY AT YOUR OWN RISK. FURTHERMORE, SAMACARE AND ITS LICENSORS DO NOT WARRANT THAT THE SAMACARE SERVICE WILL BE UNINTERRUPTED OR ERROR FREE, THAT DEFECTS WILL BE CORRECTED, OR THAT THE SAMACARE SERVICE IS FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS OR CODE. ANY MATERIAL DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SAMACARE SERVICE IS ACCESSED AT YOUR OWN DISCRETION AND RISK, AND YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF ANY SUCH MATERIAL.

10. Exclusive Remedy

If you are dissatisfied with the SamaCare Service (including without limitation these Online Terms of Service), your **sole and exclusive remedy** is to discontinue using the SamaCare Service.

11. LIMITATIONS ON LIABILITY

NOTWITHSTANDING ANYTHING ELSE IN THESE ONLINE TERMS OF SERVICE OR OTHERWISE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, SAMACARE AND ITS LICENSORS WILL NOT BE LIABLE TO YOU OR TO ANY THIRD PARTY FOR ANY LOST OR CORRUPTED DATA OR CONTENT, SPECIAL, INDIRECT, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES OF ANY KIND ARISING OUT OF USE OF THE SAMACARE SERVICE OR ANY SUBJECT MATTER OF THESE ONLINE TERMS OF SERVICE, EVEN IF SAMAARE HAS BEEN ADVISED OF OR COULD HAVE FORESEEN THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL SAMACARE HAVE ANY LIABILITY TO YOU OR ANY THIRD PARTY ARISING FROM YOUR PERMITTED USE OF THE SAMACARE SERVICE WHICH IN THE AGGREGATE IS MORE THAN US \$100.

12. Indemnification

You agree to indemnify us, our licensors and partners and our respective officers, directors, employees and agents from and against any and all claims, demands, liabilities, losses, damages, costs and expenses, including reasonable attorney's fees, that arise from any content or data you post, transmit or link from on the SamaCare Service, your misuse of the SamaCare Service, including, but not limited to, your violation of these Online Terms of Service, or your violation of any rights of any third party.

13. Termination

Subject to applicable law, SamaCare reserves the right to terminate, suspend or deny, in its sole discretion, your access to all or any portion of the SamaCare Service if (a) you fail to comply with these Online Terms of Service, (b) you cease to be covered by the health benefits of your Sponsor, or (c) your Sponsor ceases to purchase services from SamaCare. If you have an account, you acknowledge and agree that SamaCare may immediately deactivate or delete your account and all related data and files in your account, bar any further access to such data, files and the SamaCare Service, and disable your password on termination of these Online Terms of Service. The following terms shall survive any termination of these Online Terms of Service: Sections 1, 2, 5, 6, 7, 9, 10, 11, 12, 13, 14 and 16.

14. Governing Law; Jurisdiction; Venue

SamaCare controls the SamaCare Service from its offices within the USA, and your data is stored in a database managed by SamaCare in USA. SamaCare makes no representation that the SamaCare Service is appropriate, may be downloaded, or is available for use outside the USA. Access to the SamaCare Service where the content or access or use of the SamaCare Service is illegal is prohibited. Those who choose to access and use the SamaCare Service from outside the USA, do so on their own initiative, at their own risk, and are responsible for compliance with applicable local laws and USA export and other applicable laws.

The laws of the State of California, USA, will govern these Online Terms of Service, without reference to its conflicts of law principles, except that the federal law of the USA shall apply to questions regarding the validity, infringement or enforceability of USA federal patent, copyright and trademark rights relating in any way to these Online Terms of Service, or the SamaCare Service. English is the only language applicable to these Online Terms of Service. You agree to submit to the exclusive jurisdiction of, and waive any venue objections and defenses of lack of personal jurisdiction against, the State and Federal courts located in Alameda County, California, USA, except that you acknowledge that any breach of Sections 4 or 5 cannot reasonably or adequately be compensated by damages in an action at law and that a breach or threatened breach of such provisions shall cause SamaCare irreparable injury and damage, and SamaCare shall be entitled, in addition to any other remedies it may have, to preliminary and permanent injunctive and other equitable relief to prevent or curtail any actual or threatened breach in any court of competent jurisdiction. Process may be served on you in the manner authorized by applicable law or court rule.

15. Third Party Vendors

We generally may share patient's personal health information with our partners for performing their contractual obligations under agreements with us. We require our partners to protect patient's personal health information in accordance with all legal requirements.

16. Miscellaneous Terms

If any provision of these Online Terms of Service is held to be unenforceable, that provision will be removed and the remaining provisions will remain in full force. The failure of either you or SamaCare to require performance by the other party of any provision of these Online Terms of Service will not affect the right to require performance at any time in the future; nor will the waiver by either party of a breach of any provision be taken or held to be a waiver of the provision itself. These Online Terms of Service (including without limitation our Privacy Policy and Terms of Use) are the entire and exclusive agreement between you and SamaCare with respect to your access and use of the SamaCare Service. Except as otherwise provided herein, any notice permitted or required to be given under these Online Terms of Service shall be deemed sufficient if given by registered or certified mail, postage prepaid, return receipt requested, by private courier service or by facsimile or email addressed to your address as provided upon your registration and/or to SamaCare at 1433 Dwight Way, Berkeley, CA, 94702, or to such other addresses as the parties may designate by like notice from time to time. A notice so given shall be effective upon (a) receipt by the party to which the notice is given, or (b) on the fifth day following domestic mailing or the tenth day following international mailing, whichever occurs first. Any notice permitted under this Agreement to be given to SamaCare via email will be effective only upon actual receipt by SamaCare of an email message from an email address registered in connection with your account. Any delays in performance by SamaCare under this Agreement will not be considered a breach of this Agreement. There are no third party beneficiaries to this Agreement.