

## CARESEEKER'S MEMBER TERMS OF USE

Welcome to our website and for considering becoming a Member of **WELL BEYOND CARE** ("**WELL BEYOND CARE**", "**WBC**"). If you continue to browse and use this website, you are agreeing to comply with and be bound by the following membership terms and conditions of use, which together with our privacy policy govern WELL BEYOND CARE, Inc.'s relationship with you in relation to this website. If you do not accept these Terms of Use or you do not meet or comply with their provisions, you may not use the Website.

THESE TERMS AND CONDITIONS MAY BE UPDATED AND REVISED OCCASSIONALLY, SO PLEASE REVIEW THIS INFORMATION PERIODICALLY. Only registered members have access to the Members Only section.

The Site is a conduit designed to connect home Caregivers ("**Caregivers**") with Careseekers ("**Careseekers**") or Care Recipients and their families looking for in-home care services and health care resources.

WBC is in the business of empowering both Caregivers and Careseekers with the best tools and services available and provide our visitors and members, be they Caregivers or individuals requesting, seeking or receiving care (collectively, "You" or "Your") with a service designed to facilitate the best matching of home Caregivers with Careseekers and their families looking for home and elder care services. Your use of WBC's service, software, products and web sites (referred to collectively as the "Services") is subject to these terms and conditions (the "**Careseeker's Member Terms of Use**") and form a binding agreement between you and WBC.

WBC may change the terms of this "**Careseeker's Member Terms of Use**" from time to time on a going-forward basis. We will notify you of any such material changes by posting notice of the changes on the Site, and/or, in our sole discretion, by email (for Members only). Any such modifications become effective upon the earlier to occur of (i) Your acknowledgement of such modifications; or (ii) Your continued access to and/or use of the Site or Services after we post notice of such modifications. It is your sole responsibility to check the Site from time to time to view any such changes to the terms in the "**Careseeker's Member Terms of Use.**" If you do not agree to any changes, if and when such changes may be made to the "**Careseeker's Member Terms of Use,**" You must cease access to the Site and use of the Services. You give us permission to email you for the purpose of notification as described above.

### 1. MEMBER ELIGIBILITY AND ACCOUNTS

**A. Eligibility.** By using the Site, You represent and warrant that:

- You are at least 18 years old;
- You have the right, authority and capacity to enter into this Agreement;
- You will abide by all the terms and conditions of this Agreement;
- Neither You, nor anyone in your household (A) has been the subject of a complaint, restraining order or any other legal action, arrested for, charged with or convicted of any criminal offense or (B) has been and/or is currently required to register as a sex offender in any jurisdiction or with any governmental entity.

**B. Member Accounts.** A Visitor may browse the Site in accordance with the "**General Terms of Use,**" but will not have access to certain Services without first becoming a Member. In order to use the Services available to a Member, you are required to create an Account

with WBC. When you create an Account, you will need to select a unique user ID and password (collectively “**Account Credentials**”). In creating your account, you certify that all information you provide to us is true, accurate, current and complete, and you agree to maintain and promptly update such information to keep it true, accurate, current and complete. Members registered as **Careseekers** may give permission for up to ten (10) other individuals (your ‘Care Circle’) to access your account under their unique user ID. On Care Circle member may act as an administrator order to manage payments or schedule caregivers. In any case, you are solely responsible for maintaining the confidentiality of your Account Credentials. You acknowledge and agree that we rely on Account Credentials to know whether users accessing the Site and using our Services are authorized to do so. If someone accesses our Site or Services using your Account Credentials, we will rely on those Account Credentials and will assume that it is really you who is accessing the Site and Services. You are solely responsible for any and all use of your Account Credentials and Account and all activities that occur under or in connection with your Account Credentials or Account. You agree to be responsible for any act or omission of any users that access the Site or Services under your Account Credentials. You agree to create one account per person receiving care.

- C. Administrative Members:** If you are creating an Account on behalf of a third party or managing an account under Your ID, on behalf of any group or entity; you represent that you have the authority to represent such third party and bind the third party to this Agreement. For illustration purposes only, if you are creating a Careseeker account on behalf of a loved one who is seeking care, you represent that your loved one has provided you with proper authority to take action on their behalf and that your loved one will abide by this Agreement

## **2. RISK.**

Your use of any information or materials on this website is entirely at your own risk, for which WBC shall not be liable. It shall be your own responsibility to ensure that any products, services or information available through this website meet your specific requirements.

## **3. MEMBER VERIFICATION.**

- A. Member Verification by Members.** You are responsible to make your own decision regarding other Members that you engage through the Site. WBC does its best to remove individuals (Caregivers or Nurses) who are abusive, have had complaints made against them, or are soliciting members, but we do not guarantee we can identify all members who may be abusing the service. We will act upon any notifications given to us concerning Member misconduct.
- B. Background Screens.** WBC will make a third-party verification service available to Members. Members looking to engage with a Caregiver may use this service to verify information such as, but not limited to, name, address, social security number, and criminal background. Use of a third-party verification service is voluntary and strongly suggested. If You decide to use or access information provided by a third-party verification service offered through the Site, you do hereby represent, understand and expressly agree that WBC is a conduit for the third-party verification service and does

not have control over or assume any responsibility for the quality, accuracy, or reliability of the information provided by the third-party verification service. If you use the third party verification service, and such verification is governed by the Fair Credit Reporting Act (the "FCRA"), you represent and warrant that you will comply with the FCRA, which can be found at <http://www.ftc.gov/os/statutes/fcrajump.shtm>. **WBC expressly disclaims any and all liability that may result from the use of the information provided by the third party verification service. WBC expressly disclaims, and you expressly release WBC from, and agree to indemnify WBC for any and all liability whatsoever for any controversies, claims, suits, injuries and/or damages arising from and/or in any way related to (a) any misstatements and/or misrepresentations made by any Member or (b) THE ACCURACY, TIMELINESS OR COMPLETENESS OF ANY BACKGROUND CHECK provided to you in connection with the site or the services.**

- C. Optional Member Verification by WBC.** You understand and agree that WBC has the right, but not the obligation, to independently verify any statement made by any Member on the Site or verify that any Member meets any of the eligibility criteria set forth above. In the event that WBC chooses to verify the representations and warranties or any information provided by You through Your use of the Site, You hereby authorize WBC, either directly or through our vendors or service providers, to attempt to verify such information, which verification may include, without limitation, conducting criminal background checks, sex offender registry checks, motor vehicle records checks, identification verifications, credential verification checks, credit checks and/or using available public records. You consent to any collection, use or disclosure in order to accomplish such verification.
  - D. WBC is a Conduit.** The Site is a conduit designed to connect home Caregivers with Careseekers or Care Recipients and their families looking for home care services. WBC does not provide or arrange for home healthcare services other than in the context of allowing the use of its web site to facilitate an agreement between a **Careseeker** and a person looking to employ an independent **Caregiver**. WBC does not participate in the interaction between Caregiver and Careseeker except to process payments on behalf of Caregivers and collect payments from Careseekers who use any of the WBC Services (defined below). WBC does not provide any healthcare billing services. Any disputes related to the services received by Careseeker or payment due to Caregiver must be resolved directly between Careseeker and Caregiver. You understand and agree that WBC has no control over and is not responsible for the acts or omissions of any Members on or off the Site. You also understand and agree that WBC makes no representation or warranty regarding the quality of any services provided by any Member. **WBC IS NOT RESPONSIBLE FOR THE ACCURACY OR RELIABILITY OF ANY INFORMATION PROVIDED BY ANY MEMBER ON THE SITE. WBC MAY HELP, AT ITS OWN DISCRETION, TO RESOLVE BILLING DISPUTES, AND WILL DO ITS BEST TO ENSURE THAT ONLY THE HIGHEST QUALITY CAREGIVERS ARE USING ITS SERVICE BY FLAGGING CAREGIVERS WHO ARE RATED POORLY BY THEIR EMPLOYERS.**
- 4. RESTRICTIVE CONVENANTS. WBC EXPRESSLY DISCLAIMS, AND YOU EXPRESSLY RELEASE WBC FROM, ANY AND ALL LIABILITY WHATSOEVER FOR ANY DAMAGES, SUITS, CLAIMS**

**AND/OR CONTROVERSIES THAT HAVE ARISEN OR MAY ARISE FROM AND/OR IN ANY WAY RELATE TO ANY ACTS OR OMISSIONS OF MEMBERS ON OR OFF THE SITE, INCLUDING WITHOUT LIMITATION THE PROVISION OF ANY CARE SERVICES BY ANY CAREGIVER.**

Your use of this website and any dispute arising out of such use of the website is subject to the laws of the state of Texas.

**5. OWNERSHIP.**

**A. Acknowledgement.** You understand and acknowledge that the software, code, proprietary methods and systems used to provide the Site or Services ("**Our Technology**") are: (a) copyrighted by WBC and/or our licensors under United States and international copyright laws; (b) subject to other intellectual property and proprietary rights and laws; and (c) owned by WBC or our licensors. Our Technology may not be copied, modified, reproduced, republished, posted, transmitted, sold, offered for sale, or redistributed in any way without our prior written permission and the prior written permission of our applicable licensors. You must abide by all copyright notices, information, or restrictions contained in or attached to any of Our Technology. Nothing in these **Member Terms of Use** grant you any right to receive delivery of a copy of Our Technology or to obtain access to Our Technology except as generally and ordinarily permitted through the Site according to these **Member Terms of Use**. Furthermore, nothing in these **Member Terms of Use** will be deemed to grant, by implication, estoppels or otherwise, a license to Our Technology. Certain of the names, logos, and other materials displayed on the Site or in the Services constitute trademarks, trade names, service marks or logos ("**Marks**") of WELL BEYOND CARE, Inc. or other entities. You are not authorized to use any such Marks. Ownership of all such Marks and the goodwill associated therewith remains with us or those other entities. Any use of third party software provided in connection with the Site or Services will be governed by such third parties' licenses and not by these **Member Terms of Use**.

**B. Rules Regarding Information and other Content.** When you access the Site and/or Services, you obtain access to various kinds of information and materials, all of which we call "**Content**." Content includes information and materials posted to the Site or through the Services by you and other Members. You are entirely responsible for each individual item of Content that you post, email or otherwise make available on the Site or the Services. As between you and WBC, you retain ownership and any intellectual property rights in any copyrighted materials that are contained in Content that you post to the Site or through the Services. You grant us a non-exclusive, royalty-free, fully paid, fully sublicenseable, worldwide license, under any and all of your copyright and other intellectual property rights related to that Content. You agree that any such Content or any derivative works thereof, may be disseminated, distributed, publicly displayed, reproduced, used, sublicensed, posted, or published by us, and searched, displayed, printed or otherwise used or exploited only by Members using our site, or by approved 3<sup>rd</sup> party service suppliers. You agree not to revise Content posted by others, and you represent and warrant that you will not post or use any Content in any manner that:

- Infringes the copyright, trademark, trade secret, or other intellectual property or proprietary right of others;

- Violates the privacy, publicity, or other rights of third parties, including other Members;
- Violates any law, statute, ordinance or regulation, including laws regarding anti-discrimination and false advertising;
- Is false or inaccurate or becomes false or inaccurate at any time;
- Is discriminatory, unlawful, tortuous, obscene, fraudulent, defamatory, harmful, threatening, pornographic, indecent, vulgar, harassing, discourteous, hateful, abusive or racially, ethnically, religiously, sexually or otherwise offensive, as determined by us in our sole discretion;
- Discloses or provides information protected under any law, agreement or fiduciary relationship, including but not limited to proprietary or confidential information of others;
- Misrepresents your identity in any way;
- Contains any viruses, Trojan horses, worms, time bombs, cancelbots, or other disabling devices or other harmful component intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data or personal information;
- Contains any advertising or solicitation for anything other than home care services offer through the Site;
- Advocates or encourages any illegal activity; or
- Has the potential to create liability for us or cause us to violate the requirements of or to lose the services, in whole or in part, of our Internet service providers or other suppliers.

Though we strive to enforce these rules with all of our Members, and our other customers, you may be exposed through the Site or Services to content that violates our policies or is otherwise offensive. You access the Site and Services at Your own risk. We may, but are not obligated to, delete Accounts and/or remove Content from the Site if we determine or suspect that those Accounts or Content violate the terms of these **Careseeker's Member Terms of Use** or the applicable agreement with the offending Member(s). We take no responsibility for your exposure to content on the Site or through the Services whether it violates our content policies or not.

**C. General Rules of User Conduct.** It is our goal to make access to our Site and Services a pleasant, good and valuable experience for Visitors and all of our Members. Correspondence between Members is for the sole purpose of connecting Careseekers, Caregivers and other Members for purposes relating to a Careseeker's in home care. If you receive the personal information of any other Member through the use of the Services, You may use the information solely as necessary to conduct a transaction through the Site and Services. You may not use another Member's personal information for any other purpose. You agree not to, and represent and warrant that you will not reproduce, duplicate, copy, sell, resell or exploit any portion of the Site or Services, use of the Site or Services or access to the Site or Services for any purposes other than for which the Site or Services are being provided to you, or do any of the following:

**D. Rules of Conduct.** You agree not to:

- Recruit, solicit or contact any Member for employment or contracting for a business not affiliated with WBC;
- Contact other Members for any purpose other than as set forth in these **Terms of Use**;
- Harass, intimidate or otherwise engage in illegal or offensive behavior with respect to any other Member;
- Conduct or promote any illegal activities while using the Site or Services;
- Upload, distribute or print anything that may be harmful to minors;
- Attempt to reverse engineer or jeopardize the correct functioning of the Site, or otherwise attempt to derive the source code of the software (including the tools, methods, processes, and infrastructure) that enables or underlies the Site;
- Attempt to gain access to secured portions of the Site or Services to which you do not possess access rights;
- Upload or transmit any form of virus, worm, Trojan horse, or other malicious code;
- Use the Site or Services to generate unsolicited email advertisements or spam; allow, enable, or otherwise support the transmission of mass unsolicited, commercial advertising or solicitations via e-mail (spam);
- Use the Site or Services to stalk, harass or harm another individual;
- Use any high volume automatic, electronic or manual process to access, search or harvest information from the Site or Services (including without limitation robots, spiders or scripts);
- Interfere in any way with the proper functioning of the Site and Services or interfere with or disrupt any servers or networks connected to the Site or Services, or disobey any requirements, procedures, policies or regulations of networks connected to the Site or Services;
- Use any robot, spider, other automatic device, or manual process to extract, “screen scrape,” monitor, “mine,” or copy any static or dynamic web page on the Site or the Content contained on any such web page for commercial use without our prior express written permission; and WBC reserves the right, in its sole discretion, to terminate Your use of the Site or assess a \$10,000 daily penalty fee for violation of this provision;
- Impersonate any person or entity, or otherwise misrepresent Your affiliation with a person or entity; or
- Mirror or frame the Site or any Content, place pop-up windows over its pages, or otherwise affect the display of its pages.

## 6. PAYMENTS.

The Site and basic Services of WBC, including access to the basic WBC information network and WBC forums, are free for Members. Other Exclusive services, including training information, shift scheduling, time management, invoicing and payment processing services, and some WBC generated content (collectively, “**Exclusive Services**”) are included to Members who have completed their profiles and are “active” members. By using our **Exclusive Services**, Careseeker agrees to a fee charged by WBC then in effect unless specifically notified otherwise. WBC reserves the right, at any time, to modify its fees and/or billing methods. In exchange for the **Exclusive Services**, Careseekers authorizes WBC to deduct the then-current fee from all payments

processed by WBC or a third party service provider on Careseeker's behalf. When a Careseeker uses our **Exclusive Services**, then:

- A. Each Sunday, a time sheet of work hours is created for each Careseeker to whom a Caregiver provided care during the previous week;
- B. A work hour approval notice is then emailed directly to the Careseeker and/or the person who is designated to pay on behalf of the Careseeker, and is made available to the applicable Careseeker through the Site;
- C. The Careseeker reviews the work hours and, if approved, then the Careseeker will initiate payment;
- D. If there are errors on the timesheet (work hours), the Careseeker will contact the Caregiver(s) to request appropriate changes;
- E. If the Careseeker approves the work hours, the Careseeker is billed via debit card, and an ACH payment is sent to the Caregiver(s);
- F. If a Caregiver has not submitted their work hours by Sunday at 11:59:59PM then the timesheet becomes overdue, and is placed in Unresolved Work Hours;
- G. If the Careseeker has not approved the work hours by Tuesday 11:59:59 PM of the Careseeker's time zone of the same week, then the work hours are put into a unresolved status;
- H. If there are insufficient funds in the Careseeker's credit card and there is not an alternative method of payment, both the Caregiver and Careseeker will be notified by email. Since the Caregiver is an employee of the Careseeker, it is the obligation of the Caregiver to collect payment as WBC is only acting as a payment agent for the Careseeker;
- I. If funds are collected and there is no dispute on the calculated amount; Funds debited for payment to the Caregiver will be directly deposited into Caregiver's bank account within 2 days of initiating an ACH payment according to the banking details provided by Caregiver.
  - Each Caregiver must accurately enter or verify his/her time worked into the WBC time sheet on line and submit it for payment by 11:59:59 PM Sunday. Failure to do so will delay payments for any time worked.
  - WBC may in the future offer a geo-location check-in smart phone service to Caregivers to verify arrival and departure times from the Careseeker's location. Until then it is the responsibility of the Caregiver to verify the times worked.
  - Any time sheet that is **under dispute** and not resolved by 11:59:59 PM Tuesday the week of submission, will not be paid that week, and will roll over to the week the time sheet hours are resolved.
  - Caregiver is solely responsible for the accuracy of his or her bank details, including Caregiver's bank account number, bank routing number or debit card number. WBC offers account verification through a micro-deposit confirmation. WBC expressly disclaims all liability related to errors in fund deposits due to inaccurate or incomplete bank details submitted by Caregiver.

WBC reserves the right to pre-authorize a Careseeker's Credit/Debit Card for payments due a Caregiver, including the WBC weekly fee of \$5 per invoice. Pre-Authorization provides a guarantee of funds available for payment to any Caregiver employed by the Careseeker during the current work week, referred to as a set-aside on your credit card. This set-aside reduces your available credit line temporarily until the capture is performed. This is known as an "Authorize and Capture."

WBC is not responsible for and will not reimburse any fees incurred by Careseeker from their bank or other financial institution, including without limitation overdraft charges, insufficient funds charges, interest charges, or finance charges, which may have occurred as a result of charges billed by WBC.

WBC reserves the right to correct any errors in the payment of WBC fees even if it has already requested and/or received payment. Careseeker will remain responsible for the WBC fee and any other applicable fees in connection with any refund or chargeback of a Careseeker's payment.

WBC may use third party payment processing services to process credit card information. WBC expressly disclaims any and all liability for any claims or damages related to WBC's use of third party payment processing services, including without limitation any damage that may result should any such information be released to any third parties.

All payments relating to services provided by a Caregiver to a Careseeker must be made through the payment channels provided or specified by WBC. No Careseeker may make any payments directly to a Caregiver through any other payment channels. **Any action that encourages or solicits complete or partial payment outside of the WBC system is a violation of this Agreement.** Should a Careseeker be found in violation of this section of the **Careseeker's Member Terms of Use**, it will owe WBC fees equal to the greater of a) \$2,500; or b) the applicable fees had the payments been processed through the WBC system plus 10%. You shall immediately notify WBC if another Member requests that payment be made directly or through any channels other than those provided or specified by WBC. Acceptance of payments outside the approved WBC channels or without the approval of WBC may result in the permanent removal of both the Caregiver and the Careseeker, and each party may not be allowed to use the system again without paying a \$250 reinstatement fee. This paragraph is also applicable to a Careseeker who finds a Caregiver using the WBC site and decides to pay the Caregiver directly circumventing the WellBeyondCare.com system to hire or pay them. In this case, WBC reserves the right to access a \$2,500 finder's fee to the Careseeker's account and both parties will be removed from the WBC site.

## **7. TEXT MESSAGES.**

WBC may send Members text messages (SMS) in connection with the Services or otherwise. Receipt of the text messages from WBC is voluntary. By providing your phone number and deciding to receive SMS text messages from WBC, you give WBC express permission to send SMS text messages to your cellular phone and/or mobile device. Additionally, you do hereby represent, understand and expressly agree that WBC does not have control over or assume any responsibility for the quality, accuracy, or reliability of this Service. Carrier charges may apply for receiving SMS text messages. You are solely responsible for any costs you incur when receiving SMS text messages from WBC.



## **8. WBC DIRECT MESSAGING/FORUMS/SERVICES.**

WBC Members may use WBC Direct Messaging designed to facilitate communication between Careseeker or Recipients and their families with Caregivers and other Members that the Careseeker or Recipient wishes to share information with, such as their healthcare service providers. The WBC Direct Messaging Service posts messages to a Member's account as well as sends an email to Member's designated email account and any persons associated with Careseeker, also known as a Care Circle, email account.

The WBC Forums includes discussion forums, document sharing, posting announcements, scheduling events and related services.

## **9. PROFESSIONAL ADVICE.**

All information, materials, content and/or advice on the Site or provided through the Services is for informational purposes only and is not intended to replace or substitute for any professional, financial, medical, legal or other advice. WBC expressly disclaims, and you expressly release WBC from, any and all liability concerning any treatment, action by, or effect on any person following the information offered or provided within or through the Site. You should consult with an appropriately trained specialist for all concerns that require professional, legal, or medical advice.

WBC does provide experienced Registered Nurses to offer resource information to help a Careseeker and their family; obtain or connect with professionals in their local healthcare community.

## **10. PROMOTIONAL OFFERS.**

We may run promotional offers from time to time on the Site. The terms of any such promotion will be posted on the Site. Unless otherwise indicated, we may establish and modify, in our sole discretion, the terms of such offer and end such offer at any time.

## **11. MODIFICATIONS TO THE SITE OR SERVICES.**

**A. Modifications or Discontinuation.** We reserve the right to modify or discontinue the Site or Services with or without notice to you. We will not be liable to you or any third party should we exercise our right to modify or discontinue the Site and/or Services. If you object to any such changes, your sole recourse will be to cease access to the Site or Services. Continued access to the Site or Services following notice of any such changes will indicate your acknowledgement of such changes and satisfaction with the Site or Services as so modified.

**B. Third Party Content and Other Websites.** Content from other MEMBERS, advertisers, and other third parties may be made available to you through the Site and/or our SERVICES. Because we do not control such content, you agree that WBC is not responsible for any such content. WBC does not make any guarantees about the accuracy, currency, suitability, or quality of the information in such content, and we assume no responsibility for unintended, objectionable, inaccurate, misleading, or unlawful content made available by other MEMBERS, advertisers, and other third parties or violation of any third party rights related to such content. The Site and Services may contain links to websites not operated within U.S. borders. We are not responsible for the content, products, materials, or practices (including privacy practices) of such

websites. You understand that by using the Site and/or Services you may be exposed to third-party websites that you find offensive, indecent or otherwise objectionable. We make no warranty, representation, endorsement, or guarantee regarding, and accept no responsibility for, the quality, content, nature or reliability of third party websites, products or services accessible by hyperlink or otherwise from the Site or Services. We provide these links for your convenience only and we do not control such websites. Our inclusion of links to such websites does not imply any endorsement of the materials on such third party websites or any association with their operators. It is your responsibility to review the privacy policies and terms of use of any other website you visit. You agree that in no event will we be liable to you in connection with any websites, content, products, materials, or practices of any third party, including other MEMBERS. WBC will do its best to police such sites that may be offensive, indecent or otherwise objectionable and had them removed for being such but makes no guarantees to do so.

## **12. SUSPENSION/TERMINATION.**

You agree that WBC, in our sole discretion, may immediately suspend or terminate your access to the Site and Services at any time, for any reason, without notice or refund. You agree that WELL BEYOND CARE, Inc. will not be liable to you or any other party for any suspension or termination of your access to the site or services or deletion of your account or your content. Suspension or termination of your account will in no way modify, change or void any payment obligations you may have incurred through your use of the site or any services, whether such obligation is to WELL BEYOND CARE, Inc. or a third party.

## **13. DISCLAIMER OF WARRANTIES.**

You expressly agree that your use of the site and/or services is at your sole risk. Both the site and services are provided by WBC on an "as is" and "as available" basis. We expressly disclaim all warranties of any kind, whether express or implied, including, but not limited to, any warranties of merchantability, fitness for a particular use or purpose, non-infringement, title, operability, condition, quiet enjoyment, value, accuracy of data and system integration. We make no warranty that the site and/or services will meet your requirements, or that the site and/or services will be uninterrupted, timely, secure, or error free; nor do we make any warranty as to the results that may be obtained from the use of the site or services, or that defects in the site or services will be corrected. You understand and agree that any material or information downloaded or otherwise obtained through the use of the site or services is done at your own discretion and risk and that you will be solely responsible for any damage to your computer services or loss of data that results from the download of such material and/or information.

No advice or information, whether oral or written, obtained by you from WBC through the site, services, or otherwise will create any warranty, representation or guarantee not expressly stated in these **MEMBER TERMS OF USE**. We do not make any representations or warranties about protection of your data nor guarantee data availability whatsoever. You bear the sole responsibility and liability for maintaining backup or archive copies of your data and/or submissions to the site and services.

## **14. LIMITATION OF LIABILITY.**

You acknowledge and agree that WBC is only willing to provide access to the site and to provide the services if you agree to certain limitations of our liability to you and to third parties. You understand that to the extent permitted under applicable law, in no event will we or our officers, employees, directors, parents, subsidiaries, affiliates, agents or licensors be liable for any indirect, incidental, special, consequential or exemplary damages, including but not limited to, damages for loss of revenues, profits, goodwill, use, data, lost real estate opportunities, or business interruptions or other intangible losses (even if such parties were advised of, knew of or should have known of the possibility of such damages, and notwithstanding the failure of essential purpose of any limited remedy), arising out of or related to your use of or access to, or the inability to use or to access, the site or the services, regardless of whether such damages are based on contract, tort (including negligence and strict liability), warranty, statute or otherwise. We will not be liable for any damages arising from the transactions between you and third party merchants or service providers or for any information appearing on third party merchant or service provider sites or any other site linked to our site. In no event will we be liable to you or any third party in connection with any act or omission of any member. If you are dissatisfied with any portion of this site or the services, your sole and exclusive remedy is to discontinue use of the site and the services. Our total liability to you for all claims arising from or related to the site or the services is limited, in the aggregate, to one hundred dollars (U.S. \$100.00).

We reserve the right, but have no obligation, to monitor, or take any APPROPRIATE action regarding disputes that you may have with MEMBERS (Careseekers or Caregivers), service providers or other customers.

Without limiting the foregoing, under no circumstances will WBC or our licensors be held liable for any delay or failure in performance resulting directly or indirectly from acts of nature, forces, or causes beyond our reasonable control, including, without limitation, Internet failures, computer equipment failures, telecommunication equipment failures, other equipment failures, electrical power failures, strikes, labor disputes, riots, insurrections, civil disturbances, shortages of labor or materials, fires, floods, storms, explosions, acts of God, war, governmental actions, orders of domestic or foreign courts or tribunals, failure of Careseekers to pay, or non-performance of third parties.

You, as a Careseeker, are the employer of the Caregiver, and shall indemnify, defend and save harmless WELL BEYOND CARE, Inc., and its officers, directors, employees and agents, from and against all liability, loss, cost or expense (including attorney's fees) by reason of liability imposed upon WBC, arising out of or related to the services provided by a Caregiver to a Careseeker, whether caused by or contributed to by WBC or any other party indemnified herein.

#### **15. INDEMNIFICATION.**

You agree to indemnify, defend and hold harmless WELL BEYOND CARE, Inc., our parents, subsidiaries, affiliates, officers, directors, co-branders and other partners, employees, consultants and agents, from and against any and all third-party claims, liabilities, damages, losses, costs, expenses, fees (including reasonable attorneys' fees and court costs) that such parties may incur as a result of or arising from (a) any of Your Content and/or information that You submit, post or transmit through the Site or Services, (b) Your use of the Site or Services, (c) Your violation of these Terms of Use, (d) Your violation of any rights of any other person or entity

or (e) any viruses, Trojan horses, worms, time bombs, cancelbots or other similar harmful or deleterious programming routines input by You into the Site or Services.

#### **16. COPYRIGHT VIOLATIONS.**

We respect the intellectual property of others, and we ask you to do the same. If you believe that your work has been copied in a way that constitutes copyright infringement, please provide our Copyright Agent the following information:

- An electronic or physical signature of the person authorized to act on behalf of the owner of the copyright interest;
- a description of the copyrighted work that You claim has been infringed;
- a description of where the material that You claim is infringing is located on the Site or Services;
- your address, telephone number, and email address;
- a statement by You that You have a good faith belief that the disputed use is not authorized by the copyright owner, its agent, or the law; and
- a statement by you, made under penalty of perjury, that the above information in your notice is accurate and that you are the copyright owner or authorized to act on the copyright owner's behalf.

Our Copyright Agent for notice of claims of copyright infringement on the Site or Services can be reached by directing an e-mail to **copyright@WellBeyondCare.com**.

#### **17. ELECTRONIC COMMUNICATIONS.**

The WBC will use electronic means to communicate with you. The types of communications available electronically are subject to change, and if additional communications become available in an electronic format, you will receive those communications electronically. Upon becoming a Member, you (a) consent to receive communications from WBC in an electronic form; and (b) agree that all terms and conditions, agreements, notices, documents, disclosures, and other communications (“Communications”) that we provide to you electronically satisfy any legal requirement that such Communications would satisfy if it were in writing. Your consent to receive Communications and do business electronically, and our agreement to do so, applies to all of your interactions and transactions with us. The foregoing does not affect your non-waivable rights. You may also receive a copy of this Member Terms of Use by accessing this Site. You may withdraw your consent to receive Communications electronically by contacting us in the manner described below. If you withdraw your consent, from that time forward, you must stop using the Site and Services. The withdrawal of your consent will not affect the legal validity and enforceability of any obligations or any electronic Communications provided or business transacted between us prior to the time you withdraw your consent. You agree to keep WBC informed of any changes in your email or mailing address so that you continue to receive all Communications without interruption.

#### **18. NO THIRD PARTY BENEFICIARIES.**

You understand and agree that, except as otherwise expressly provided in this **Member Terms of Use**, there shall be no third party beneficiaries to this **Agreement**.

#### **19. NO AFFILIATION.**

You acknowledge that you are not legally affiliated with WBC in any way, and no independent contractor, partnership, joint venture, employer-employee or franchiser-franchisee relationship is intended or created by your use of the Site or Services or by this Agreement. **WBC is not an employment service or agency and does not secure employment for Members.**

## **20. GENERAL TERMS.**

You are responsible for compliance with all applicable laws. The **Member Terms of Use** and the relationship between you and WELL BEYOND CARE, Inc. will be governed by the laws of the State of Texas, without giving effect to any choice of laws principles that would require the application of the laws of a different country or state. Any legal action, suit or proceeding arising out of or relating to the **Member Terms of Use**, or your use of the Site or Services must be instituted exclusively in the federal or state courts located in the City of Austin, in Travis County, in the State of Texas and in no other jurisdiction. You further consent to exclusive personal jurisdiction and venue in, and agree to service of process issued or authorized by, any such court. This **Member Terms of Use** are personal to you or your designated account manager(s), and you may not transfer your account, but may assign or delegate as account managers or payors; Your right and/or duties under this **Member Terms of Use** to anyone else and any attempted assignment or delegation is void. You acknowledge that we have the right hereunder to seek an injunction, if necessary, to stop or prevent a breach of your obligations hereunder. The paragraph headings in this **Member Terms of Use**, shown in boldface type, are included only to help make this **Member Terms of Use** easier to read and have no binding effect. Any delay or failure by WELL BEYOND CARE, Inc. to exercise or enforce any right or provision of this **Member Terms of Use** will not constitute a waiver of such right or provision. No waiver by us will have effect unless such waiver is set forth in writing, signed by an WBC officer; nor will any such waiver of any breach or default constitute a waiver of any subsequent breach or default. This **Member Terms of Use** constitutes the complete and exclusive agreement between you and WELL BEYOND CARE, Inc. with respect to the subject matter hereof, and supersedes all prior oral or written understandings, communications or agreements. If for any reason a court of competent jurisdiction finds any provision of these **Member Terms of Use**, or portion thereof, to be unenforceable, that provision of the **Member Terms of Use** will be enforced to the maximum extent permissible so as to effect the intent of the parties, and the remainder of these **Member Terms of Use** will continue in full force and effect.

## **21. SURVIVAL.**

All provisions that by their nature survive expiration or termination of these **Member Terms of Use** shall so survive, including without limitation, Section 3, Section 4, all limitations on liability explicitly set forth herein and our proprietary rights in and to the Site, Content provided by us, Our Technology, and the Services.

## **22. NOTICE; CONTACT INFORMATION.**

We may give notice to you by email, a posting on the Site, or other reasonable means. You must give notice to us in writing to our corporate address, email to [support@WellBeyondCare.com](mailto:support@WellBeyondCare.com) or as otherwise expressly provided. Please report any violations of this **Member Terms of Use** to [abuse@WellBeyondCare.com](mailto:abuse@WellBeyondCare.com).

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