

Cloud CME and Mobile App Terms of Use

The Terms were last updated on September 3, 2020

Local Storage of Data: Please be aware that personal data and any information provided by you or created, stored, or otherwise accessible in connection with your use of the Website and Mobile Application may be stored locally on your Device. Such data and information will be accessible to third parties that have access to your Device and/or any software, hardware or platform associated with your Device. It is your responsibility to maintain the security of your Device from unauthorized access. You can access and clear any stored data at any time via your Device settings.

Minimum Age for Eligibility

You must be eighteen (18) years or older (the “**Minimum Age**”) to use the Website or Mobile Application and our Services.

1. General Use and Acceptance of Terms

1.1 The Website and Mobile Application (as defined in section 1.2) is licensed, not sold, to you by Burn and Reconstructive Centers of America Foundation (“**BRCAF**” or “**us**” or “**we**”) for use strictly in accordance with the following terms of use (“**Terms**”), all applicable laws, and the applicable usage rules established by any third party device platform or service provider or the third party from whom you are downloading this Mobile Application or that otherwise relate to your Device (as defined in section 2.1) (“**Usage Rules**”), which are incorporated herein by reference. It is your responsibility to determine what Usage Rules apply to your use of the Website and Mobile Application, as they may be applicable to you depending on (i) your Device, (ii) the method by which you downloaded the Application or accessed the preloaded Application, and (iii) the third party from whom you downloaded the Application or accessed the preloaded Application.

1.2 The term “Application” shall refer to and consist of the following: (i) the CloudCME platform, together with any software code, scripts, interfaces, graphics, displays, text, documentation and other components; and (ii) any updates, modifications or enhancements to the items listed in subsection (i) (collectively, the “Mobile Application”). Failure to download and install any software updates may prevent the proper functionality of the Devices until the updates are installed.

1.3 The Application is intended to be used to allow users a functional device. This will allow users to access all the common functions of CloudCME everywhere. With the Devices the user can easily create an audience response questions delivered on the Devices.



1.4 By accessing or using the Application, you are representing that you are of legal age (18 years and over) and of legal competence to enter into these Terms (a binding agreement with BRCAF), and are not otherwise prohibited from using or receiving the Application pursuant to any applicable Usage Rules and/or the laws of the local or national jurisdiction from which you are accessing or using the Application. If you are not able to make the representations in the preceding sentence, you are prohibited from using the Application; however, any unauthorized use of the Application by you shall be subject to these Terms until your unauthorized usage terminates.

1.5 You acknowledge and understand that the Mobile Application requires and utilizes phone service or data access to properly function. Except for any applicable download or installation fees, BRCAF does not charge for the use of the Mobile Application; however, carrier rates for phone or data service may apply, and you are solely responsible for any such charges.

1.6 The Application may provide users with access to the BRCAF website located at <https://burncenters.cloud-cme.com> (the “**Website**”) and the content and services accessible thereon (collectively, “**Website Content**”). Your access to and use of the Website and any Website Content is governed by Website’s [Terms of Use](#) and [Privacy Policy](#), which are incorporated herein by this reference. Any violation of such Terms of Use will also be deemed a violation of these Terms.

2. License Grant and Restrictions on Use

2.1 BRCAF grants you a revocable, non-exclusive, non-transferrable, limited right to install and use the Mobile Application on any mobile telephone or device controlled by you (each a “**Mobile Device**”), and to access and use the Mobile Application on such Mobile Device strictly in accordance with these Terms and the applicable Usage Rules.

2.2 In order to access or use the Application, you must register and create an account (“**Account**”) with BRCAF. Information gathered through the registration process and any other information related to your Account will be subject to these Terms as well as to our [Privacy Policy](#). You represent and warrant that all information provided by you when creating your Account is true, accurate and complete and that you will maintain, at all times, true, accurate and complete information related to your Account. Information related to your Account should be maintained by you in a confidential manner, as you are solely responsible for the usage of your Account by any third parties with respect to the Application. It is your responsibility to advise us if you are aware of any unauthorized access to your Account or if your Account information has been made available by you to third-parties in a manner that may result in unauthorized usage of the Account. In our sole and absolute discretion, we may terminate your Account for any reason (including for reasons related to unlawful or unauthorized usage), and we are under no obligation to retain a record of your Account or any data or information that you may have stored by means of the Account.



2.3 In addition, you agree not to use the Application:

- To transmit any viruses, worms, defects, Trojan horses, time bombs, cancel-bots, corrupted files, or other items of a destructive nature;
- To post, transmit, submit, or include any unlawful, harmful, threatening, abusive, harassing, defamatory, vulgar, obscene, sexually explicit, profane, hateful, racially, ethnically, or otherwise objectionable content, material, or information of any kind, or any content, material, or information that may give rise to criminal or civil liability;
- Submit or post any false or misleading information;
- To violate, infringe, or misappropriate the intellectual property, publicity, privacy, or other proprietary rights of BRCAF, or any other person or entity;
- In any way that violates any applicable federal, state local or international law or regulation (including without limitation any laws regarding data privacy or security or the export of data or software to and from the US or other countries);
- For the purpose of exploiting, harming or attempting to exploit or harm minors in any way by exposing them to inappropriate content, asking for personally identifiable information, or otherwise; or
- To transmit, or procure the sending of, any advertising or promotional material, including any “junk mail,” “chain letter,” “spam,” or any other similar solicitation.

BRCAF reserves the right to prohibit access, use, conduct, communications, or content that we, in our sole discretion, deem to be harmful to BRCAF, the Mobile Application users, or any other person or entity, or that we reasonably determine in our sole discretion violates these Terms and/or applicable law.

2.4 You shall not: (i) decompile, reverse engineer, disassemble, attempt to derive the source code of, or decrypt the Application; (ii) make any modification, adaptation, improvement, enhancement, translation or derivative work from the Application; (iii) violate any applicable laws, rules or regulations in connection with your access or use of the Application; (iv) remove, alter or obscure any proprietary notice (including any notice of copyright or trademark) of BRCAF or its affiliates, partners, suppliers or the licensors; or (v) install, use or permit the Mobile Application to exist on any Mobile Device at a time or on any other mobile device or computer, other than by means of your separate downloads of the Mobile Application, each of which are subject to separate licenses (this restriction however does not limit your right to reinstall the Mobile Application on the specific Mobile Device for which it was downloaded)

2.5 You agree that you will not use the Application or any Images or Patient Information for any revenue generating endeavor, commercial enterprise, or other purpose for which it is not designed or intended.

2.6 You acknowledge CloudCME may from time to time issue upgraded versions of the Mobile Application and may automatically electronically upgrade the version of the Mobile Application you are using on your Mobile Device. You consent to such automatic upgrading on your Mobile



Device and agree that these Terms will apply to all such upgrades. Failure to download and install any software upgrades or updates may prevent the proper functionality of the Mobile Application.

2.7 From time to time, and without prior notice to you, we may change, expand or improve the Application. We may also, at any time, cease to continue operating part or all the Application or selectively disable certain aspects or portions of the Application. Any modification or elimination of the Application will be done in our sole and absolute discretion and without an ongoing obligation or liability to you. Your use of the Application does not entitle you to the continued provision or availability of the Application.

3. Intellectual Property Notice

3.1 You acknowledge and agree (i) the Application (including the design, text, graphics, pictures, applications, software and other files contained therein or related thereto), (ii) the source and object code of the Mobile Application, (iii) the BRCAF company names, logos, and all related products and service names, design marks and slogans, and (iv) any and all copyrights, patents, trademarks, trade secrets, publicity rights and other intellectual property rights associated therewith (collectively, the “**Intellectual Property**”), are the sole property of BRCAF, its wholly-owned subsidiaries, affiliates, licensors, suppliers or other third parties. Except as expressly and unambiguously provided herein, you do not possess, and BRCAF does not grant to you, any express or implied rights (whether by implication, estoppel or other legal theory) in or to any Intellectual Property (or the unauthorized use of the Intellectual Property) and all such rights are retained by BRCAF, its subsidiaries, affiliates, licensors and/or any third party owner of such rights. You acknowledge and agree that you, and not BRCAF or any third party mobile device platform or service provider, shall be solely responsible for the investigation, defense, settlement and discharge of any intellectual property infringement claim or suit, or any other harm or damages resulting from your use of or access to the Application.

4. Warranty Disclaimer

4.1 By using the Application, you acknowledge and agree that BRCAF and its owners, employees, agents, contractors and users are not responsible for your use of the Application, you agree that in no event will BRCAF, or any of the developers, providers, or users of the Application, be liable to you in any manner whatsoever for any decision made, action or non-action taken by you in reliance upon the Images and Patient Information provided through the Application. Further, you acknowledge that BRCAF does not provide medical services, consultations, or other professional recommendations.

4.2 THE APPLICATION IS PROVIDED “AS IS” AND “AS AVAILABLE” WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. BRCAF DISCLAIMS, TO THE FULLEST EXTENT PERMITTED UNDER LAW, ANY



WARRANTIES REGARDING THE SECURITY, RELIABILITY, TIMELINESS, ACCURACY AND PERFORMANCE OF THE APPLICATION. BRCAF DOES NOT WARRANT THAT ANY DEFECTS OR ERRORS WILL BE CORRECTED; OR THAT THE APPLICATION IS FREE OF VIRUSES, ERRORS, OTHER HARMFUL COMPONENTS, OR WILL BE UNINTERRUPTED.

4.3 SOME STATES OR OTHER JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSIONS MAY NOT APPLY TO YOU. YOU MAY ALSO HAVE OTHER RIGHTS THAT VARY FROM STATE TO STATE AND JURISDICTION TO JURISDICTION AND THAT MAY NOT BE LIMITED BY THESE TERMS, PROVIDED HOWEVER YOU AGREE AND ACKNOWLEDGE THAT, TO THE EXTENT PERMISSIBLE UNDER APPLICABLE LAW, YOU WAIVE ANY SUCH STATUTORY RIGHTS WITH RESPECT TO IMPLIED WARRANTIES.

4.4 Neither BRCAF, nor any of the associated Device platform or service providers, warrants that the Application will be compatible or interoperable with your Device or any other piece of hardware, software, equipment or device installed on or used in connection with your Device. Furthermore, you acknowledge that compatibility and interoperability problems can cause the performance of your Device to diminish or fail completely and may result in permanent damage to your Device, loss of the data located on your Device, and corruption of the software and files located on your Device. You acknowledge and agree that BRCAF and its affiliates, partners, suppliers, licensors, and associated device platform and service providers shall have no liability to you for any losses suffered resulting from or arising in connection with compatibility or interoperability problems.

5. Limitation of Liability & Indemnification

5.1 IN NO EVENT SHALL BRCAF OR ANY OF ITS AFFILIATES OR ASSOCIATED MOBILE DEVICE PLATFORM AND SERVICE PROVIDERS BE LIABLE TO ANY USER ON ACCOUNT OF SUCH USER'S USE, MISUSE OR RELIANCE ON THE MOBILE APPLICATION, IMAGES OR INFORMATION FOR ANY DAMAGES WHATSOEVER, INCLUDING DIRECT, SPECIAL, PUNITIVE, INDIRECT, CONSEQUENTIAL OR INCIDENTAL DAMAGES OR DAMAGES FOR LOSS OF PROFITS, REVENUE, USE, OR DATA, WHETHER BROUGHT IN WARRANTY, CONTRACT, INTELLECTUAL PROPERTY INFRINGEMENT, TORT (INCLUDING NEGLIGENCE) OR OTHER THEORY, EVEN IF BRCAF OR ANY OF ITS AFFILIATES OR ASSOCIATED MOBILE DEVICE PLATFORM AND SERVICE PROVIDERS ARE AWARE OF OR HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE, ARISING OUT OF OR CONNECTED WITH (1) THE USE (OR INABILITY TO USE) OR PERFORMANCE OF THE MOBILE APPLICATION, OR (2) NEITHER BRCAF, NOR ANY OF ITS AFFILIATES OR ASSOCIATED MOBILE DEVICE PLATFORM OR SERVICE PROVIDERS, ASSUMES ANY LEGAL LIABILITY OR RESPONSIBILITY FOR THE ACCURACY, COMPLETENESS, TIMELINESS OR USEFULNESS OF ANY INFORMATION ACCESSIBLE FROM THE MOBILE APPLICATION. IN NO EVENT SHALL BRCAF OR ANY OF ITS AFFILIATES OR ASSOCIATED MOBILE DEVICE PLATFORM AND SERVICE PROVIDERS BE LIABLE TO ANY USER FOR ANY COSTS (INCLUDING COURT COSTS AND ATTORNEYS' FEES OR THOSE ARISING FROM NOTIFICATION EXPENSES OR MITIGATION STEPS), FINES, OR PENALTIES ARISING FROM ANY BREACH OF OR IMPROPER ACCESS TO THE MOBILE APPLICATION.



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5.2 THE USER OF THE MOBILE APPLICATION ASSUMES ALL RESPONSIBILITY AND RISK FOR THE USE OF THE MOBILE APPLICATION GENERALLY.

5.3 THE FOREGOING LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY, OR IF IT IS OTHERWISE DEEMED UNENFORCEABLE, AND TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW. THESE LIMITATIONS AND EXCLUSIONS APPLY WITHOUT REGARD TO WHETHER THE DAMAGES ARISE FROM (1) BREACH OF CONTRACT, (2) BREACH OF WARRANTY, (3) NEGLIGENCE, OR (4) ANY OTHER CAUSE OF ACTION, TO THE EXTENT SUCH EXCLUSIONS AND LIMITATIONS ARE NOT PROHIBITED BY APPLICABLE LAW.

5.4 SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY OF CONSEQUENTIAL OR INCIDENTAL DAMAGES, SO THE ABOVE EXCLUSIONS MAY NOT APPLY TO ALL USERS; IN SUCH STATES LIABILITY IS LIMITED TO THE FULLEST EXTENT PERMITTED BY LAW.

DAMAGES PROVISION. THE INDEMNIFICATION PROVISIONS OF THIS SECTION SHALL SURVIVE THE TERMINATION OF THESE TERMS AND SENDING USER'S USE OF THE APPLICATION.

6. Termination of the Mobile Application Service

6.1 You agree that BRCAF, in its sole discretion, has the right (but not the obligation) to delete or deactivate your account or otherwise terminate your access to or use of the Mobile Application (or any part thereof), immediately and without notice, for any reason, including, without limitation, if BRCAF believes that you have acted inconsistently with the letter or spirit of the Terms. Further, you agree that BRCAF and its affiliates shall not be liable to you or any third-party for any termination of your access to the Mobile Application.

7. Privacy

7.1 Certain personal information and other information provided by you in the use of the Mobile Application may be stored on your Mobile Device even if such information is not collected by BRCAF. It is your responsibility to maintain the security of your Mobile Device from unauthorized access.

8. Export Regulation

8.1 The Mobile Application may be subject to US export control laws, including the US Export Administration Act and its associated regulations. You shall not, directly or indirectly, export, re-export, or release the Mobile Application to, or make the Mobile Application accessible from, any jurisdiction or country to which export, re-export, or release is prohibited by law, rule, or regulation. You shall comply with all applicable federal laws, regulations, and rules, and complete all required undertakings (including obtaining any necessary export license or other



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governmental approval), prior to exporting, re-exporting, releasing, or otherwise making the Mobile Application available outside the US.

9. US Government Rights

9.1 The Application is commercial computer software, as such term is defined in 48 C.F.R. §2.101. Accordingly, if you are an agency of the US Government or any contractor therefor, you receive only those rights with respect to the Application as are granted to all other end users under license, in accordance with (a) 48 C.F.R. §227.7201 through 48 C.F.R. §227.7204, with respect to the Department of Defense and their contractors, or (b) 48 C.F.R. §12.212, with respect to all other US Government licensees and their contractors.

10. Remedies Available to Us

10.1 We reserve the right to seek any and all remedies available at law or in equity in connection with your violation of these Terms.

11. Miscellaneous

11.1 You are responsible for compliance with applicable laws, regulations and ordinances related to your use of the Mobile Application. Your compliance with applicable laws is not limited to jurisdictions within the United States (including US Federal law) but also the laws, regulations and ordinances of any jurisdiction from which you access the Mobile Application.

11.2 These Terms will be governed by and construed in accordance with the laws of the State of Georgia, without giving effect to its conflict of law's provisions or your actual state or country of residence, and you agree to submit to personal jurisdiction in Richmond County, Georgia.

11.3 Any disputes that arise between the parties with respect to the performance of this contract shall be submitted to binding arbitration by the American Arbitration Association before one (1) arbitrator, to be determined and resolved by said Association under its rules and procedures at the time such arbitration is requested. Such arbitration shall occur in Richmond County, Georgia, and the parties consent to jurisdiction in that county. The parties shall endeavor to have the arbitration expedited and the arbitration shall be concluded within seventy-five (75) days from the filing of the demand for arbitration. Any award rendered shall be final and conclusive upon the parties hereto and a judgment thereon may be entered in the highest court of the forum, state or federal, having jurisdiction. The expenses of the arbitration shall be borne equally by the parties to the arbitration, provided that each party shall pay for and bear the cost of its own experts, evidence and counsel's fees, except that, in the discretion of the arbitrator, any award may include the cost of a party's counsel if the arbitrator expressly determines that the party against whom such award is entered has caused the dispute, controversy or claim to be submitted to arbitration as a dilatory tactic.



12. Revisions

12.1 BRCAF may, at any time, revise these Terms by updating this posting. You are bound by any such revisions and should therefore periodically update this application to review the then-current Terms of Use to which you are bound.