



## TERMS & CONDITIONS

Last Updated: February 1st, 2025

### **IMPORTANT NOTICE: THIS AGREEMENT IS SUBJECT TO BINDING ARBITRATION AGREEMENT AND A WAIVER OF CLASS ACTION RIGHTS AS DETAILED IN SECTION 15.**

These Terms of Use (the “**Terms**” or “**Agreement**”) set forth the terms and conditions under which individuals residing in the United States may use the AAPCS Site and/or Services (as defined below). Certain Services are subject to additional policies, rules and terms and conditions, which you may be required to agree to as a condition of using those Services (“**Additional Terms**”). In those cases, the applicable Additional Terms are set forth in the printed or online Service materials relating to those Services.

Please read these Terms and any applicable Additional Terms before using the Site or the Services. By using the Site or the Services, you hereby represent, warrant, understand, agree to and accept these Terms and any applicable Additional Terms in their entirety.

**THIS AGREEMENT CONTAINS AN AGREEMENT TO ARBITRATE, WHICH WILL, WITH LIMITED EXCEPTION, REQUIRE YOU TO SUBMIT CLAIMS YOU HAVE AGAINST AAPCS TO BINDING AND FINAL ARBITRATION, UNLESS YOU OPT OUT OF THE AGREEMENT TO ARBITRATE (SEE SECTION 15 “AGREEMENT TO ARBITRATE”) NO LATER THAN 30 DAYS AFTER THE DATE YOU FIRST USE THE AAPCS SITE OR SERVICES. UNLESS YOU OPT OUT: (1) YOU WILL ONLY BE PERMITTED TO PURSUE CLAIMS AGAINST AAPCS ON AN INDIVIDUAL BASIS, NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY CLASS OR REPRESENTATIVE ACTION OR PROCEEDING, AND (2) YOU WILL ONLY BE PERMITTED TO SEEK RELIEF (INCLUDING MONETARY, INJUNCTIVE, AND DECLARATORY RELIEF) ON AN INDIVIDUAL BASIS.**

These Terms include the AAPCS Privacy Policy, which is incorporated herein. If you object to anything in these Terms, the Privacy Policy or any applicable Additional Terms, do not use the Site or the Services.

These Terms are subject to change by AAPCS at any time, subject to the following notification process. We will notify you about material changes in these Terms by sending a notice to the email address registered with AAPCS, or by placing a prominent notice on our Site, so that you can choose whether to continue using our Site and Services. Material changes will go into effect no less than 30 days after we notify you. Non-material changes or clarifications will take effect immediately upon posting of the updated Terms on our Site. You should periodically check these terms. Any use of the Site or the Services by you after the effective date of any changes will constitute your acceptance of such changes. These Terms supersede all prior versions of the Terms.

For purposes of these Terms, and except to the extent expressly excluded below, the “Site” shall mean hallmarkhomecare.com and any other websites, web pages, mobile applications and mobile websites operated by Hallmark Homecare, LLC., A Direct Referral Agency (“**Above All Personal**

**Care Services, Inc**” or **“AAPCS”** or **“we”** or **“us”**) in the United States, and the **“Services”** shall mean any of the various services that AAPCS and its Affiliates (defined below) provide through the Site or any other channels, including without limitation, over the telephone.

## **1. Description of Services; Limitations; User Responsibilities**

### **1.1 About Our Services**

AAPCS offer various Services to assist individuals seeking care services (**“Clients”**) in finding individuals and entities who provide personal care services (**“Caregivers”**), and for Caregivers to find jobs.

We also offer optional services to help Clients manage the services provided by Caregivers through third party vendors Clients and Caregivers may contract with directly (**“Managed Care Organization”**).

### **1. 2 Limitations of our Services**

We employ caregivers and are not responsible for the conduct, whether online or offline, of any Client, Caregiver, or other user of the Site or Services. Except where specifically provided in these Terms or in any applicable Additional Terms.

We do not assume and expressly disclaim any responsibility for the accuracy or reliability of any information provided by Caregivers or Clients. We do not assume and expressly disclaim any liability that may result from the use of information provided on our Site or in the course of utilizing our Services.

We do not provide any medical, diagnostic, treatment or clinical service or engage in any conduct that requires a professional license.

We may offer certain Clients or Caregivers the opportunity to verify certain information such as their email address, cell phone number and other personal sensitive information. If we indicate that certain information has been verified, it means that the user has complied with the process we have established for verifying such information. However, we do not guarantee, nor do we represent or warrant, that the information is accurate or that it belongs to the Client or Caregiver who supplied it. Please review carefully the Release of Liability in Section 13 below for important limitations on AAPCS’s liability to which you are agreeing by using the Site and Services.

**AAPCS EXPRESSLY DISCLAIMS, AND YOU EXPRESSLY RELEASE AAPCS 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 CAREGIVERS.**

### **1.3 User Responsibilities**

We shall confirm Caregiver’s credentials and work with a third party to conduct a background check, but Users of our Site or Services are otherwise solely responsible for interviewing, verifying information provided by, and selecting an appropriate Client or Caregiver for themselves or their family. The background check is conducted near the date a Caregiver registers with AAPCS to receive job opportunities and is not repeated at any point after the initial registration process absent unless otherwise agreed and contracted between the Caregiver and Client. The background check generally includes a Social Security Trace, Government/Healthcare Sanctions Search, Office of

Foreign Assets Control sanctions list search, National Criminal check, National Sex Offender check, and a County Criminal check. Client understands that AAPCS obtains background information through products provided by various third-party sources “AS IS,” and therefore is assessing the information “AS IS.” AAPCS makes no representation or warranty whatsoever, express or implied, including, but not limited to, implied warranties of merchantability or fitness for particular purpose, and implied warranties arising from the course of dealing or a course of performance with respect to the accuracy, validity, or completeness of any information products and/or consumer reports. AAPCS expressly disclaims all such representations and warranties. See Section 5 for additional terms related to background checks.

Each Client is responsible for complying with all applicable employment and other laws in connection with any employment relationship they establish, including verifying the age of the Caregiver they select as well as that Caregiver’s eligibility to work in the US, and each Caregiver is responsible for maintaining (i) workers’ compensation coverage for Caregiver and Caregiver’s employees and subcontractors to the extent required by applicable law and (ii) all other insurance required to operate his or her business in conformance with applicable law and industry standards.

## 2. Eligibility to Use the Site and Services

By requesting to use, registering to use and/or using the Site or the Services, you represent and warrant that you have the right, authority and capacity to enter into these Terms and you commit to abide by all of the terms and conditions hereof. You also represent and warrant that you meet the following eligibility criteria:

- You intend to use the Site and Services solely for the purpose of finding or managing care or care-related jobs, or for finding or sharing information relating to care.
- Our Services are available only to individuals who are eighteen (18) years of age or older. If you do not meet this age requirement, do not register with AAPCS to use the Site or Services.
- The Site and the Services are currently available only to individuals who reside legally in the United States.
- If you are applying to be a Caregiver, you must be permitted to legally work within the United States.

## 3. Rules for User Conduct and Use of Services

### 3.1 Registration and Content

The following rules pertain to “**Content**”, defined as all the material, documents, communications, data, and information that any Client or Caregiver uploads, transmits, posts, publishes, or displays (hereinafter, “**Provides**”) through the Site or in relation to the Services, whether to AAPCS or to other Clients or Caregivers, including without limitation any content, messages, photos, audios, videos, reviews or profiles:

- Any Content that you Provide through the Site or Services is solely for the purpose of finding or managing care or for finding or sharing information relating to care.
- You are responsible for providing accurate, current and complete information and in connection with your compliance for use of the Services.
- You will apply with AAPCS in your own legal name, even if you are seeking care for another individual or family member.
- You are solely responsible for your Content. You will not Provide any Content that is defamatory, abusive, obscene, profane, or offensive, or that infringes or violates another

party's rights (including, but not limited to, intellectual property rights, and rights of privacy and publicity).

- You will not Provide inaccurate, misleading, defamatory or false Content to AAPCS or to any Client or Caregiver, and all opinions stated as part of Content must be genuinely held. Without limiting the foregoing, you represent and warrant to us that you have the right and authority to Provide your Content, whether about yourself or others, including without limitation that you have authorization from a parent or guardian of any minor who is the subject of any Content to Provide such Content.
- You understand and agree that AAPCS may, in its sole discretion, review, edit, and delete any Provided Content.
- You have the right, and hereby grant, to AAPCS, its Affiliates, licensees and successors, an irrevocable, perpetual, non-exclusive, fully paid-up, transferable, worldwide license to use, copy, perform, display, reproduce, adapt, modify and distribute your Content and to prepare derivative works of, or incorporate into other works, such Content, and to grant and authorize sublicenses of the foregoing. You further represent and warrant that use of your Content by AAPCS will not infringe or violate the rights of any third party.
- Your use of the Site and Services, including but not limited to the Content you Provide, must be in accordance with any and all applicable laws and regulations.

As Content is primarily generated by Clients and Caregivers, except as expressly described, we do not vet such Content for accuracy, and we do not assume and expressly disclaim any responsibility for the accuracy or reliability of any Content provided by Caregivers or Clients, including any Content that may include misstatements or misrepresentations. Clients and Caregivers hereby represent, understand and agree to hold AAPCS harmless for any misstatements, misrepresentations, or other disparaging or defamatory statements made by or on behalf of them. Opinions, advice, statements, offers, or other information or content made available on the Site or through the Services, but not directly by AAPCS, are those of their respective authors. Such authors are solely responsible for such content. AAPCS does not: (i) guarantee the accuracy, completeness, or usefulness of any information on the Site or available through the Service, or (ii) adopt, endorse or accept responsibility for the accuracy or reliability of any opinion, advice, or statement made by any party that appears on the Site or through the Service. Under no circumstances will AAPCS or its Affiliates be responsible for any loss or damage resulting from your reliance on information or other content transmitted to or by any user of the Site or Service.

We welcome your feedback and questions about the Site and Services. However, you agree that any comments, ideas, messages, questions, suggestions, or other communications you send to us or share with us through any channel (including, without limitation, the Site, email, telephone, surveys, in-person, and our social media accounts) shall be and remain the exclusive property of AAPCS and we may use all such communications, all without notice to, consent from, or compensation to you.

### **3.2 Prohibited Uses**

By using the Site or Services of AAPCS, you agree that you will not under any circumstances:

- use the Site, Services, or any information contained therein in any way that is abusive, threatening, obscene, defamatory, libelous, or racially, sexually, religiously, or otherwise objectionable or offensive;
- use the Site or Services for any fraudulent or unlawful purpose, for any purpose unrelated to care or caregiving, or for any other purpose not expressly intended by AAPCS;
- harass, abuse or harm another person or group, or attempt to do so;

- use another user's AAPCS account;
- provide false or inaccurate information when registering with AAPCS, using the Services or communicating with other Clients or Caregivers;
- attempt to re-register with AAPCS if we have terminated your account for any or no reason or terminate your registration and re-register to prevent any Content from being associated with you;
- interfere or attempt to interfere with the proper functioning of AAPCS's Site or Services;
- make any automated use of the system, or take any action that we deem to impose or to potentially impose an unreasonable or disproportionately large load on our servers or network infrastructure;
- bypass any measures we take to restrict access to the Service or use any software, technology, or device to scrape, spider, or crawl the Service or harvest or manipulate data (whether manually or through automated means);
- use the communication systems provided by or contacts made on AAPCS for any commercial solicitation purposes other than those expressly permitted by AAPCS; or
- publish or link to malicious content intended to damage or disrupt another user's browser or computer.

In order to protect our users from prohibited activity, we reserve the right to take appropriate actions. Should AAPCS find that you violated the terms of this Section or any terms stated herein, AAPCS reserves the right, at its sole discretion, to immediately terminate your use of the Site and Services.

In order to protect the integrity of the Site and the Services, AAPCS reserves the right at any time in its sole discretion to block users from certain IP addresses from accessing the Site.

#### 4. Ownership

You understand and acknowledge that the software, code, proprietary methods and systems used to provide the Services ("AAPCS IP") are: (a) copyrighted by us 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 us or our licensors. AAPCS IP 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 AAPCS IP. Nothing in these Terms grant you any right to receive delivery of a copy of AAPCS IP or to obtain access to AAPCS IP except as generally and ordinarily permitted through the Site and the Services according to these Terms. Except as expressly provided in Section 3.2, nothing in these Terms will be deemed to grant, by implication, estoppel or otherwise, a license to AAPCS IP. Certain of the names, logos, and other materials displayed on the Site or in the Services constitute trademarks, trademarks, service marks or logos ("Marks") of AAPCS 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.

#### 5. Background and Verification Checks

**5.1 Background Checks.** AAPCS shall confirm Caregiver's credentials and may conduct a background check ("**Background Checks**"). Background Checks may be regulated by New Mexico Department Of Health ("**NMDOH**"), and the background reports resulting from these services may be considered "consumer reports" under FCRA. Consumer reports may contain information on your character, general reputation, personal characteristics, and mode of living, including but not limited to

consumer credit, criminal history, workers' compensation, driving, employment, military, civil, and educational data and reports. You are responsible for making sure that the email address you provide to AAPCS is correct, knowing that sensitive information will be sent to it. If you are a Caregiver and you have authorized a Background Check on yourself from a third-party consumer reporting agency through AAPCS, we may indicate in your profile that you have completed that check. However, we will not share the results with others without your specific authorization.

**5.2 Responsibilities of Users of Background Checks.** The use of Background Checks obtained through the Site is governed by the FCRA and certain state laws. If you order or request access to a Background Check, you may be considered an end user of the check, which would require agreeing to a required End User Certification before the check will be processed. This End User Certification requires you to certify that you will comply with the FCRA and any applicable state laws and summarizes key legal obligations. A summary of your responsibilities in using the information contained in the background check can be found at:

<https://www.ftc.gov/business-guidance/resources/using-consumer-reports-what-employers-need-know>. If there is negative data in a check you receive, and you choose to take "adverse action" (e.g., if you choose to pass on that individual's candidacy) on the basis of this negative data, you must agree to take certain procedural steps, which can be found at

<https://www.ftc.gov/business-guidance/resources/using-consumer-reports-what-employers-need-know>. These may include notifying the individual who is the subject of the report of your decision to take adverse action based on information contained in the report and the subject's right to contest the accuracy or completeness of the report. Depending on the specific background check you order, AAPCS may provide a mechanism for you to request that the consumer reporting agency who performed the check complete these steps on your behalf. Where such a mechanism is not available, you are responsible for making any required notifications yourself. If the subject contests the report with the consumer reporting agency, you are required to suspend the hiring process while the agency researches the accuracy and completeness of the report.

**5.3 Background Checks You Order or Authorize.** Subject to your authorization, you acknowledge and agree that AAPCS may review and use any Background Checks you have ordered or authorized about yourself for the purpose of protecting the safety and integrity of our Site and Services, and its users, which may, in the case of certain Caregivers, be considered an employment purpose pursuant to the FCRA. AAPCS reserves the right to terminate your access to the Site and Services based on the information contained in a background report, even if such information was subsequently dismissed. If we do so, we will notify you and provide you the name and contact information of the consumer reporting agency that created the report. You will also be provided with a copy of the report unless the consumer reporting agency has already provided you a copy or access to it. You hereby represent, understand and expressly agree that AAPCS does not have control over or assume any responsibility for the quality, accuracy, or reliability of the information included in these Background Checks. Furthermore, any inaccuracies in the report must be addressed with the consumer reporting agency that issued it and not AAPCS.

**5.4 Preliminary Screenings.** By registering for and using the Site or Services as a Client or Caregiver, you hereby acknowledge and agree that AAPCS has the right, but not the obligation, to use a third-party consumer reporting agency on an ongoing basis to use your personal information to run periodic background screenings on you for the purpose of protecting the safety and integrity of our Site and Services and its users ("**Preliminary Screens**"), which may, in the case of certain Caregivers, be deemed to be an employment purpose under the FCRA. Subject to certain additional disclosures and authorizations, if applicable to you as a Caregiver, AAPCS may order these

screenings when you register with AAPCS and thereafter in connection with your continued use of our Services and/or interaction with our Site (such as by contacting or communicating with other members, posting or updating a job or profile, ordering or authorizing a Background Check, etc.). These Preliminary Screens may also be regulated by FCRA, and the background reports resulting from these services may be considered “consumer reports” under FCRA. You understand and agree that AAPCS may review the information provided by the third-party consumer reporting agency and that AAPCS retains the right to terminate your access to the Site or Services based on the information it receives from these checks, even if such information was subsequently changed or corrected. If AAPCS terminates your access to the Site or Services on the basis of information in a background report, you will be notified and provided with the name and contact information of the consumer reporting agency that created the report. You will also be provided with access to a copy of the report unless the consumer reporting agency has already provided you a copy or access to it. You hereby represent, understand and expressly agree that AAPCS does not have control over or assume any responsibility for the quality, accuracy, or reliability of the information included in these checks. Furthermore, any inaccuracies in the report must be addressed with the consumer reporting agency that issued it (and not AAPCS) within the time period specified in your notice. Notwithstanding this, you agree that AAPCS is under no obligation to reinstate your access to the Site or Service that AAPCS may have terminated even if the information that led to the termination is subsequently changed or corrected. BY AGREEING TO THESE TERMS AND USING OUR SITE OR SERVICES, AND, IF APPLICABLE TO YOU AS A CAREGIVER, SUBJECT TO YOUR ADDITIONAL AUTHORIZATION, YOU AGREE TO THE PERFORMANCE OF THESE PRELIMINARY SCREENS FOR THE PURPOSES DESCRIBED ABOVE. IF YOU DO NOT WANT THESE PRELIMINARY SCREENS TO BE PERFORMED, YOU SHOULD NOT USE AAPCS’S SITE OR SERVICES.

**5.5 Verification.** By registering as a Caregiver or Client, and, if applicable to you as a Caregiver, subject to your additional authorization, you authorize AAPCS, and acknowledge that for purposes of promoting the safety and integrity of its Site and Service, AAPCS reserves the right, but not the obligation, to utilize third party service providers to verify on an ongoing basis that your registration data is accurate and that the representations and warranties in Section 2 are also true (“**Verification Checks**”). These third parties may use data from a variety of sources, under a variety of circumstances, for these site safety purposes including, without limitation, information from national criminal databases, sex offender registries, certain media streams, fraud watch lists, law enforcement reports, and other data. You agree that AAPCS may take such action in response to Verification Checks as it deems appropriate in its sole discretion, including without limitation suspending and/or terminating your access to the Site or Services, should it determine that you have violated any representation or warranty or any other provision of these Terms, or are otherwise determined by AAPCS, in its sole discretion, to be unsuitable for the Site or Services. You also hereby represent, understand and expressly agree that AAPCS does not have control over or assume any responsibility for the quality, accuracy, or reliability of the information included in a Verification Check. We do not typically communicate the results of a Verification Check to any third party, though we reserve the right to do so for law enforcement or other safety-related purposes in accordance with applicable laws. BY AGREEING TO THESE TERMS, AND, IF APPLICABLE TO YOU AS A CAREGIVER SUBJECT TO YOUR ADDITIONAL AUTHORIZATION, YOU AGREE TO ALLOW AAPCS TO PERFORM THE VERIFICATION CHECKS DESCRIBED ABOVE. IF YOU DO NOT WANT THESE VERIFICATION CHECKS TO BE PERFORMED, YOU SHOULD NOT USE AAPCS’S SITE OR SERVICES.

**5.6 Important Limitations About Background Checks; Release of Liability for Results of Background Checks, Preliminary Screens, and Verification Checks.** For many states only certain

registered sex offender information is reported, and for many states, only a subset of felony convictions are reported (and not any misdemeanors, charges or arrest records). In addition to legal and reporting system limitations of background checks, each check is performed with the authorization of the person being checked, using information he or she provides, such as home address, social security number, date of birth, and name. If a candidate provides incorrect information, the check might be run with inaccurate identifying data, which can impact the validity of the criminal check. Finally, criminal records are not always reported accurately or promptly, and human and electronic error can result in inaccurate or incomplete reporting. Consequently, even the most comprehensive background check offered may not disclose the existence of all criminal records in all jurisdictions. If you decide to access, use, or share information provided by a Background Check, you agree to do so in accordance with applicable law. You also agree to release, indemnify and hold harmless AAPCS from any loss, liability, injury, death, damage, or costs that may result from your use of, reliance on, or sharing of the information contained in a Background Check regardless of the cause, including, without limitation, due to the inaccuracy or incompleteness of any such information. You expressly acknowledge that AAPCS has no obligation to perform Background Checks, Preliminary Screens, or Verification Checks on any users of our Site or Services. To the extent AAPCS performs such checks on certain users of our Site or Services, the checks are limited and should not be taken as complete, accurate, up-to-date or conclusive evidence of the accuracy of any information those users have provided or of their eligibility to use the Services.

## **6. Termination**

AAPCS reserves the right, in its sole discretion, to immediately terminate your access to all or part of the AAPCS Site and/or Services, to remove any content posted, and/or to terminate your account with AAPCS, with or without notice for any reason or no reason in its sole discretion, including without limitation if AAPCS should determine that you are not eligible to use the Services, have violated any terms stated herein or in any of the Additional Terms, are not suitable for participation as a Client or Caregiver, or have misused or misappropriated content. Upon termination, AAPCS shall be under no obligation to: (i) provide you with a copy of any content posted by or about you; or (ii) notify you of the reason, if any, for your termination. You understand and agree that, following any termination of any individual's use of the Site or the Services, AAPCS has the right, but not the obligation, to send a notice of such termination to other Client or Caregivers with whom we believe the individual has corresponded. Our decision to terminate an individual's registration and/or to notify other users of our Site or Services with whom we believe the individual has corresponded does not constitute and should not be interpreted or used as information bearing on the individual's character, general reputation, personal characteristics, or mode of living.

## **7. Privacy**

AAPCS uses the information you provide on the Site or via the Services or in accordance with our Privacy Policy. For more information, see our Privacy Policy, the terms of which are incorporated herein.

## **8. Links to External Sites**

Links from the Site to external sites (including external sites that are framed by AAPCS) or inclusion of advertisements and other third-party content on the Site or are provided pursuant to our Services, do not constitute an endorsement by AAPCS of such sites or the content, products, advertising and other materials presented on such sites or of the products and services that are the subject of such third-party content, but are for users' reference and convenience. AAPCS does not control third-party



sites or content and is not responsible for them. Such sites and content are governed by their respective owners' terms of use and privacy policies, and not these Terms or AAPCS's Privacy Policy. AAPCS expressly disclaims any liability derived from the use and/or viewing of links that may appear on this Site or are provided pursuant to our Services. All users hereby agree to hold AAPCS harmless from any liability that may result from the use of links that may appear on the Site or are provided pursuant to our Services.

## **9. No 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. AAPCS expressly disclaims, and You expressly release AAPCS 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 or Services. You should consult with an appropriately trained specialist for all concerns that require professional or medical advice.

### **10.1 Liability for Payment**

I further understand that Personal Care Services provided to me by Above All PCS, Inc will be billed to the following.  Medicaid Turquoise Care  
**(AAPCS does not bill for member services not rendered)**

## **11. Release of Liability**

By using this Site or our Services, you hereby represent, understand, and expressly agree to release and hold AAPCS (and AAPCS's officers, directors, shareholders, employees, parents, subsidiaries, franchisees, other affiliates, successors, assignees, agents, representatives, advertisers, marketing partners, licensors, independent contractors, recruiters, corporate partners or resellers, (collectively, "**Affiliates**")) harmless from any claim or controversy that may arise out of:

- the actions or inactions of, or the relationship between, you and any Client, Caregiver or other user(s) of the Site or Services; and
- any information, instruction, advice or services created by any Client, Caregiver, or other third party that appeared on, or was communicated through, the Site or Services.

AAPCS and its Affiliates expressly disclaim any liability whatsoever for any damage, suits, claims, and/or controversies that have arisen or may arise, whether known or unknown, from the above.

## **12. Age Restrictions**

AAPCS's Site and Services are intended for people 18 or over. AAPCS will not knowingly collect any information from individuals under 18. Should we determine that you do not meet the age requirements for using our Site or Services, your registration will be terminated immediately.

## **13. Disclaimers; Limitations; Waivers; Indemnification**

### **13.1 No Warranty**

The information and materials contained on the Site, including text, graphics, information, links or other items are provided "as is," "as available." Further, Content, opinions, advice, statements, offers, or other information or content made available through the Services, but not directly by AAPCS, are those of their respective authors, and should not necessarily be relied upon. Such authors are solely

responsible for such content. AAPCS DOES NOT: (1) WARRANT THE ACCURACY, ADEQUACY OR COMPLETENESS OF THIS INFORMATION AND MATERIALS; (2) ADOPT, ENDORSE OR ACCEPT RESPONSIBILITY FOR THE ACCURACY OR RELIABILITY OF ANY OPINION, ADVICE, OR STATEMENT MADE BY ANY PARTY OTHER THAN AAPCS; (3) WARRANT THAT YOUR USE OF THE SITE OR SERVICES WILL BE SECURE, FREE FROM COMPUTER VIRUSES, UNINTERRUPTED, ALWAYS AVAILABLE, ERROR-FREE OR WILL MEET YOUR REQUIREMENTS, OR THAT ANY DEFECTS IN THE SERVICES WILL BE CORRECTED; OR (4) GIVE ANY WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS. TO THE EXTENT PERMITTED BY APPLICABLE LAW, AAPCS EXPRESSLY EXCLUDES ALL CONDITIONS, WARRANTIES AND OTHER TERMS WHICH MIGHT OTHERWISE BE IMPLIED BY STATUTE, COMMON LAW OR THE LAW OF EQUITY AND DISCLAIMS LIABILITY FOR ERRORS OR OMISSIONS IN THIS INFORMATION AND MATERIALS. IN ADDITION, AND WITHOUT LIMITING THE FOREGOING, AAPCS MAKES NO REPRESENTATION OR WARRANTIES OF ANY KIND WHETHER EXPRESS OR IMPLIED REGARDING THE SUITABILITY OF ANY USER OF OUR SITE OR SERVICES TO EMPLOY THE SERVICES OF A CAREGIVER OR TO PROVIDE SERVICES AS A CAREGIVER.

### **13.2 Assumption of Risk**

While AAPCS takes certain steps to help promote the safety of our Site and Services, finding care or care-related jobs via an online platform like ours comes with certain inherent risks. We cannot guarantee that all of your interactions with other Clients or Caregivers, their families, or others associated with them, will always be 100% safe and respectful. You agree to assume all risks when using the Site and the Services, including but not limited to injury, illness, death, and all other risks associated with interactions with Clients and Caregivers. You also agree not to rely solely on steps AAPCS may take to vet or screen Caregivers or Clients and/or their Content, or otherwise to promote the safety of the Site and Services. You further agree to take all necessary precautions, including but not limited to reviewing the recommendations set forth in AAPCS's Handbook, when interacting with other users of AAPCS's Site and Services, their families, and others associated with them.

### **13.3 Limitation of Liability**

**Incidental Damages and Aggregate Liability.** In no event will AAPCS be liable for any indirect, special, incidental, or consequential damages, losses or expenses arising out of or relating to the use or inability to use the Site or Services, including without limitation damages related to any information received from the Site or Services, or in connection with any termination of your ability to access the Site or Services, failure of performance, error, omission, interruption, defect, delay in operation or transmission, computer virus or line or system failure, even if AAPCS, or representatives thereof, are advised of the possibility of such damages, losses or expenses. UNDER NO CIRCUMSTANCES WILL AAPCS'S AGGREGATE LIABILITY, IN ANY FORM OF ACTION WHATSOEVER IN CONNECTION WITH THIS AGREEMENT OR THE USE OF THE SERVICES OR THE SITE, EXCEED THE AMOUNT PAID BY YOU FOR SERVICES, OR, IF YOU HAVE NOT PAID AAPCS FOR THE USE OF ANY SERVICES.

**No Liability for non-AAPCS Actions.** IN NO EVENT WILL AAPCS BE LIABLE FOR ANY DAMAGES WHATSOEVER, WHETHER DIRECT, INDIRECT, GENERAL, SPECIAL, COMPENSATORY, CONSEQUENTIAL, OR OTHERWISE, ARISING OUT OF OR RELATING TO THE CONDUCT OF YOU OR ANYONE ELSE IN CONNECTION WITH THE USE OF THE SITE OR THE SERVICES OR ANY AGREEMENT OR RELATIONSHIP FORMED USING THE SITE OR SERVICE, INCLUDING WITHOUT LIMITATION, BODILY INJURY, EMOTIONAL DISTRESS,

AND/OR ANY OTHER DAMAGES RESULTING FROM ANYONE'S RELIANCE ON INFORMATION OR OTHER CONTENT POSTED ON THE SITE OR PROVIDED PURSUANT TO THE SERVICES, OR TRANSMITTED TO OR BY ANY CLIENT OR CAREGIVER OR ANY OTHER INTERACTIONS WITH OTHER CLIENTS OR CAREGIVERS, WHETHER ONLINE OR OFFLINE. THIS INCLUDES ANY CLAIMS, LOSSES OR DAMAGES ARISING FROM THE CONDUCT OF CLIENTS OR CAREGIVERS WHO ARE USING THE SITE OR SERVICES UNDER FALSE PRETENSES OR WHO ATTEMPT TO DEFRAUD OR HARM YOU. In addition to the preceding paragraphs of this Section and other provisions of these Terms, any advice that may be offered or provided within or through the Site or Services is for informational purposes only and is not intended to replace or substitute for any professional financial, medical, legal, or other advice. AAPCS makes no representations or warranties and expressly disclaims 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 or Services. If you have specific concerns or a situation arises in which you require professional, legal, or medical advice, you should consult with an appropriately trained and qualified specialist.

#### **13.4 Indemnification**

By agreeing to these Terms, users of the Site and Services agree to indemnify, defend and hold harmless AAPCS and its Affiliates from and against any and all claims, losses, expenses or demands of liability, including reasonable attorneys' fees and costs incurred by AAPCS and its Affiliates in connection with any claim by a third party (including an intellectual property claim) arising out of: (i) materials and content you submit (including Content), post, transmit, or Provide through the Site or in connection with the Services, (ii) use of the Site or Services by you in violation of these Terms of Use or in violation of any applicable law, or (iii) any relationship or agreement formed with a Client or Caregiver using the Site or Services. Users further agree that they will cooperate as reasonably required in the defense of such claims. AAPCS and its Affiliates reserve the right, at their own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by users, and users shall not, in any event, settle any claim or matter without the written consent of AAPCS. Users further agree to hold harmless AAPCS and its affiliates from any claim arising from a third party's use of information or materials of any kind that users post to the Site.

#### **14. Consent to Electronic Communication**

By using the Site or Services, you agree to allow AAPCS to communicate with you electronically, and you consent to electronic delivery of notices, documents, or products (including, without limitation, reports or copies of Background Checks, Verification Checks, and Preliminary Screens) from AAPCS, whether via the Site, SMS or e-mail. You also agree to check your accounts associated with the Site and Services on a reasonably regular basis to stay apprised of important notices and information about your account.

#### **15. Agreement to Arbitrate**

Section 15 is referred to in these Terms as the "**Arbitration Agreement**". Unless you opt-out in accordance with the opt-out procedures set forth in Section 15.6 below, you agree that all claims relating to or arising out of these Terms or the breach thereof, whether sounding in contract, tort, or otherwise that have arisen or may arise between you and AAPCS or a AAPCS Affiliate, whether relating to these Terms (including any alleged breach thereof), the Services, the Site, or otherwise, shall be resolved exclusively through final and binding arbitration, rather than a court, in accordance with the terms of this Arbitration Agreement, except you may assert individual claims in small claims court, if your claims qualify. Your rights will be determined by a neutral arbitrator, not a judge or jury.

The Federal Arbitration Act governs the interpretation and enforcement of this Arbitration Agreement. If you are a Caregiver who has signed a stand-alone arbitration agreement or an applicant agreement that contains an arbitration provision, the terms of that agreement and understanding will control if any conflict exists between that agreement and the terms below.

### **15.1 Prohibition of Class and Representative Actions and Non-Individualized Relief**

YOU AND AAPCS AGREE THAT EACH OF US MAY BRING CLAIMS AGAINST THE OTHER ONLY ON AN INDIVIDUAL BASIS AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE ARBITRATION, ACTION OR PROCEEDING. UNLESS BOTH YOU AND AAPCS EXPRESSLY AGREE OTHERWISE, THE ARBITRATOR MAY NOT CONSOLIDATE OR JOIN MORE THAN ONE PERSON'S OR PARTY'S CLAIMS AGAINST AAPCS AND MAY NOT OTHERWISE PRESIDE OVER ANY FORM OF A CONSOLIDATED, REPRESENTATIVE, OR CLASS PROCEEDING. ALSO, THE ARBITRATOR MAY AWARD RELIEF (INCLUDING MONETARY, INJUNCTIVE, AND DECLARATORY RELIEF) ONLY IN FAVOR OF THE INDIVIDUAL PARTY SEEKING RELIEF AND ONLY TO THE EXTENT NECESSARY TO PROVIDE RELIEF NECESSITATED BY THAT PARTY'S INDIVIDUAL CLAIM(S). ANY RELIEF AWARDED CANNOT AFFECT OTHER AAPCS USERS. If any court or arbitrator determines that the class action waiver set forth in this paragraph is void or unenforceable for any reason or that an arbitration can proceed on a class basis, then the arbitration provision set forth above shall be deemed null and void in its entirety and the parties shall be deemed to have not agreed to arbitrate disputes.

### **15.2 Pre-Arbitration Dispute Resolution**

AAPCS is always interested in resolving disputes amicably and efficiently. So before you commence arbitration, we suggest that you contact us to explain your complaint, as we may be able to resolve it without the need for arbitration. You may contact us at 8010 Mountain Rd NE Ste 200, Albuquerque, NM 87110.

### **15.3 Arbitration Procedures**

If we cannot resolve a Claim informally, Arbitrators are assigned to a case by the Court. Arbitrators are attorneys with at least five years of experience who reside or have an office in Bernalillo County. Arbitrators may be paid \$100 by the Court. There is no charge to the parties unless the parties select their own arbitrator. If the parties select their own arbitrator, they may be required to pay the arbitrator's fee.

The court-appointed arbitrator issues an award after each party has had an opportunity to present their case. The decision is non-binding. Either party may appeal. On appeal, the assigned district court judge hears the case de novo, which means from the beginning.

### **15.4 Costs of Arbitration**

Payment of all filing, administration, and arbitrator fees (collectively, the "**Arbitration Fees**") will be governed by the Court. Each party will be responsible for all other fees it incurs in connection with the arbitration, including without limitation, all attorney fees. In the event the arbitrator determines the claim(s) you assert in the arbitration to be frivolous, you agree to reimburse AAPCS for all fees associated with the arbitration paid by AAPCS.

See <https://seconddistrict.nmcourts.gov/self-representation/arbitration/> for more information.

## **15.5 Confidentiality**

All aspects of the arbitration proceeding, and any ruling, decision or award by the arbitrator, will be strictly confidential for the benefit of all parties unless otherwise prohibited by applicable law.

## **15.6 Opt-Out Procedure**

You can choose to reject this Arbitration Agreement by mailing us a written opt-out notice (“**Opt-Out Notice**”) in accordance with the terms of this Section. For new AAPCS users, the Opt-Out Notice must be postmarked no later than 30 Days after the date you use our Site or Services for the first time. You must mail the Opt-Out Notice to 8010 Mountain Rd NE Ste 200, Albuquerque, NM 87110. The Opt-Out Notice must state that you do not agree to the Arbitration Agreement and must include your name, address, phone number, and the email address(es) used to log in to the AAPCS account(s) to which the opt-out applies. You must sign the Opt-Out Notice for it to be effective. This procedure is the only way you can opt out of the Arbitration Agreement. If you opt out of the Arbitration Agreement, AAPCS will likewise not be bound by these arbitration provisions. All other terms of these Terms will continue to apply. Opting out of the Arbitration Agreement has no effect on any previous, other, or future arbitration agreements that you may have with us. AAPCS users who accepted a previous version of these Terms that included an arbitration agreement, and who did not timely opt out of that arbitration agreement, remain bound by the last arbitration agreement that they accepted. Upon receipt of a valid Opt-Out Notice, AAPCS will provide the opting out user with a copy of the arbitration agreement from the last version of the Terms that the user accepted, if any exists.

## **15.7 Future Changes to this Arbitration Agreement**

Notwithstanding any provision in these Terms to the contrary, you and we agree that if we make any change to this Arbitration Agreement (other than a change to any notice address or website link provided herein) in the future, such change shall not be effective until at least 60 days from the date of posting, and shall not apply to any claim that was filed in a legal proceeding against AAPCS prior to the effective date of the change. Moreover, if we seek to terminate this Arbitration Agreement from these Terms, such termination shall not be effective until 30 days after the version of these Terms not containing the Arbitration Agreement is posted to the Site, and shall not be effective as to any claim that was filed in a legal proceeding against AAPCS prior to the effective date of removal.

## **16. Governing Law and Jurisdiction**

These Terms, and all claims relating to or arising out of this contract, or the breach thereof, whether sounding in contract, tort, or otherwise, shall be governed by the laws of the State of New Mexico, including New Mexico’s statutes of limitations governing your claim, without giving effect to its principles of conflicts of law, provided that the Federal Arbitration Act shall govern the interpretation and enforcement of the Arbitration Agreement in Section 15. Any action or proceeding commenced regarding this Agreement shall be brought in Bernalillo County 2nd Judicial District, New Mexico. Unless you and we agree otherwise, in the event that the Arbitration Agreement is found not to apply to you or to a particular claim or dispute (except for small-claims court actions), either as a result of your decision to opt-out of the Arbitration Agreement or as a result of a decision by the arbitrator or a court order, you agree that any claim or dispute that has arisen or may arise between you and AAPCS must be resolved exclusively by a state or federal court located in the State of New Mexico.

You and AAPCS agree to submit to the personal jurisdiction of the courts located within the State of New Mexico for the purpose of litigating all such claims or disputes.

### **17. Miscellaneous**

Nothing in these Terms shall be construed as making either party the partner, joint venturer, agent, legal representative, employer, contractor or employee of the other. No party shall have, or hold itself out to any third party as having any authority to make any statements, representations or commitments of any kind, or to take any action, that shall be binding on the other, except as provided for herein or authorized in writing by the party to be bound. The invalidity, illegality or unenforceability of any term or provision of these Terms shall in no way affect the validity, legality or enforceability of any other term or provision of these Terms. Each affiliate or franchisee of AAPCS is expressly made a third-party beneficiary of these Terms and may enforce the Terms directly against you. The Terms will be binding on and will insure to the benefit of the legal representatives, successors and assigns of the parties hereto. Any waiver or failure to enforce any provision of the Terms on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion. The Terms, and your rights and obligations hereunder, may not be assigned, subcontracted, delegated or otherwise transferred by you without AAPCS's prior written consent, and any attempted assignment, subcontract, delegation, or transfer in violation of the foregoing will be null and void.

### **18. Severability**

If any portion of these Terms, other than Section 15.2, is held invalid or unenforceable, that portion shall be construed in a manner to reflect, as nearly as possible, the original intention of the parties, and the remaining portions shall remain in full force and effect, and these Terms shall be enforceable as so modified. If a court decides that any of the provisions of Section 15.2 are invalid or unenforceable, then the entirety of Section 15 shall be null and void, and the remaining portions shall remain in full force and effect, and these Terms shall be enforceable as modified.

### **19. Contact Information**

If you have any questions or need further information as to the Site or Services provided by AAPCS, or need to notify AAPCS as to any matters relating to the Site or Services please contact us at:

Above All Personal Care Services Inc.  
8010 Mountain Rd NE Ste 200  
Albuquerque, NM 87110