

TERMS OF USE AGREEMENT TEMPLATE FOR PHYSICIAN WEBSITES

Originally published September 2010/Revised: December 2012

This Terms of Use Agreement template is for use by CMPA members who provide patient portal services, general advice, information, or promotional materials on a website.

The CMPA makes this template available with the understanding that it remains the members' responsibility to adapt the Agreement to their particular situation. Members may wish to seek advice from their own personal legal counsel in preparing a Terms of Use Agreement for their website.

How to use this template

The template includes instructional text indicating terms and conditions that are recommended depending upon the functionality of the member's website.

- The template Agreement is presented in PDF format. Members should create their own Terms of Use Agreement by copy and pasting the clauses that apply to their situation.
- Instructional text within the template appears as **[Instruction:... End of instruction]**. Members should not include this text in their Agreement.

Terms of Use Agreement

Acceptance

It is important that you read all the following terms and conditions carefully. This Terms of Use Agreement ("Agreement") is a legal agreement between you and *[name of legal owner of the website, i.e. Dr. John Smith or John Smith Professional Corporation; if multiple owners, contact the CMPA for advice]*, the owner and operator ("Owner") of this Website (the "Website"). It states the terms and conditions under which you may access and use the Website and all written and other materials displayed or made available through the Website, including, without limitation, articles, text, photographs, images, illustrations, audio clips, video clips, computer software, and code (the "Content"). By accessing and using the Website, you are indicating your acceptance to be bound by the terms and conditions of this Agreement. If you do not accept these terms and conditions, you must not access or use the Website. The Owner may revise this Agreement at any time by updating this posting. Use of the Website after such changes are posted will signify your acceptance of these revised terms. You should visit this page periodically to review this Agreement.

Medical emergency

Do NOT use the Website for medical emergencies. If you have a medical emergency, call a physician or qualified healthcare provider, or **CALL 911 immediately**. Under no circumstances should you attempt self-treatment based on anything you have seen or read on the Website.

General information is not medical advice

The general information provided on the Website is for informational purposes only and is not professional medical advice, diagnosis, treatment, or care, nor is it intended to be a substitute therefore. Always seek the advice of your physician or other qualified health provider properly licensed to practise medicine or general healthcare in your jurisdiction concerning any questions you may have regarding any information obtained from this Website and any medical condition you believe may be relevant to you or to someone else. Never disregard professional medical advice or delay in seeking it because of something you have read on this Website. Always consult with your physician or other qualified healthcare provider before embarking on a new treatment, diet, or fitness program. Information obtained on the Website is not exhaustive and does not cover all diseases, ailments, physical conditions, or their treatment.

No physician-patient relationship

The presentation of general information on the Website does not establish a physician-patient relationship between you and the Owner (or any of its physicians) and is not intended as a solicitation of individuals to become patients or clients of the Owner (or any of its physicians). This section does not apply to the extent that you are using the Website to communicate with a physician with whom you have an existing physician-patient relationship.

No endorsements

Unless specifically stated, the Owner does not recommend or endorse any specific brand of products, services, procedures, or other information that appears or that may be advertised on the Website.

[Instruction: Recommended clause if the website provides patient portal functionality. All physicians/clinics should have a privacy policy that governs how personal information is collected, used, and disclosed by the physician or clinic. End of instruction.]

Patient portal services

If you are an existing patient, the Website may allow you to communicate with the Owner and your physician(s) by email or by some other electronic means. Communications sent by you to the Owner or your physician, or to you by the Owner or your physician via email or this Website may not be secure and may be accessible by third parties. Any use or disclosure of personal information provided by you shall be in accordance with our privacy policy.

The Owner may issue to you a username ("Username") and a password ("Password") to permit you to access the patient portal portion of the Website. You are solely responsible for the confidentiality and use of your Username and Password.

[Instruction: If the website allows appointments to be booked or email communication with the public, the following clause should be appropriately amended. End of instruction.]

Email communication with the public

The Owner does not wish to use this Website as a means of communication with the public

(i) regarding questions or issues of a medical nature; (ii) to establish physician-patient relationships; (iii) to book or cancel appointments; or (iv) for inquiries regarding fees, services, or similar matters. Email communications regarding such matters will not be responded to and will be discarded unread. If you are not an existing patient and you wish to contact the Owner or its physicians regarding medical questions or issues or with regard to appointments, accounts, or other questions, please do so by telephone, fax, or regular mail in the manner set out in the Website.

Disclaimer of warranties

The Website and the Content are provided "AS IS" and "AS AVAILABLE." While the Owner endeavours to provide information that is correct, accurate, current, and timely, the Owner makes no representations, warranties, or covenants, express or implied, regarding the Website and the Content including, without limitation, no representation, warranty, or covenant that (i) the Content contained in or made available through the Website or any item(s) made available on or through the Website will be of merchantable quality and/or fit for a particular purpose; (ii) the Website or Content will be accurate, complete, current, reliable, timely, or suitable for any particular purpose; (iii) that the operation of the Website will be uninterrupted or error-free; (iv) that defects or errors in the Website or the Content, be it human or computer errors, will be corrected; (v) that the Website will be free from viruses or harmful components; and (vi) that communications to or from the Website will be secure and/or not intercepted.

You acknowledge and agree that your access and use of the Website and the Content is entirely at your own risk and liability.

Limitation of liability

In no event shall the Owner, its physicians, officers, directors, employees, agents, licensors, and their respective successors and assigns be liable for damages of any kind, including, without limitation, any direct, special, indirect, punitive, incidental, or consequential damages including, without limitation, any loss or damages in the nature of, or relating to, lost business, medical injury, personal injury, wrongful death, improper diagnosis, inaccurate information, improper treatment, or any other loss incurred in connection with your use, misuse, or reliance upon the Website or the Content, or your inability to use the Website, regardless of the cause and whether arising in contract (including fundamental breach), tort (including negligence), or otherwise. The foregoing limitation shall apply even if the Owner knew of or ought to have known of the possibility of such damages.

The Owner also expressly disclaims any and all liability for the acts, omissions, and conduct of any third-party user of the Website, or any advertiser or sponsor of the Website (“third-party”). Under no circumstances shall the Owner, its physicians, officers, directors, employees, agents, licensors, and their respective successors and assigns, be liable for any injury, loss, damage (including direct, special, indirect, punitive, incidental, or consequential damages), or expense arising in any manner whatsoever from (i) the acts, omissions, or conduct of any third-party; and (ii) any access, use, reliance upon, or inability to use any materials, content, goods, or services located at, or made available at, any Website linked to or from the Website, regardless of the cause and whether arising in contract (including fundamental breach), tort (including negligence), or otherwise. The foregoing limitation shall apply even if the Owner knew of or ought to have known of the possibility of such damages.

Indemnity

You agree to indemnify, defend, and hold harmless the Owner and its physicians, officers, directors, employees, agents, licensors, and their respective successors and assigns, from and against any and all claims, demands, liabilities, costs, or expenses whatsoever, including, without limitation, legal fees and disbursements, resulting directly or indirectly from (i) your breach of any of the terms and conditions of this Agreement; (ii) your access to, use, misuse, reliance upon, or inability to access or use the Website, the Content, or any Website to which the Website is or may be linked to from time to time or; (iii) your use of, reliance on, publication, communication, distribution, uploading, or downloading of anything (including the Content) on or from the Website.

Copyright

The Content is protected by copyright law and is owned by the Owner and its licensors, or the party accredited as the provider of the Content. Except as granted in the limited licence herein, any use of the Content, including modification, transmission, presentation, distribution, republication, or other exploitation of the Website or of its Content, whether in whole or in part, is prohibited without the express prior written consent of the Owner.

Limited licence

Subject to the terms and conditions of this Agreement, you are hereby granted a limited, non-transferable, and non-exclusive licence to access, view, and use the Website and the Content for your personal, non-commercial use. You are granted the right to download, store, and/or print single copies of items comprising the Content for your personal, non-commercial use, provided that you maintain all copyright and other notices contained in such Content. You may not copy and/or repost items comprising the Content online. You must also abide by any additional requirements governing the use of any specific Content that may be set out in the Website. In the event of a conflict between the terms of a licence governing specific Content and this Agreement, the terms of the specific licence shall govern.

[Instruction: Recommended clause if the owner has trademarks that he/she uses on the site. End of instruction.]

Trademarks

[List trademark(s)] is/are trademarks of the Owner. Other names, words, titles, phrases, logos, designs, graphics, icons, and trademarks displayed on the Website may constitute registered or unregistered trademarks of the Owner or third parties. While certain trademarks of third parties may be used by the Owner under licence, the display of third-party trademarks on the Website should not be taken to imply any relationship or licence between the Owner and the owner of the trademark or to imply that the Owner endorses the wares, services, or business of the owner of the said trademark.

[Instruction: Recommended clause if the website contains links to third-party websites. End of instruction.]

Linking

The Website contains links to third-party Websites. These links are provided solely as a convenience to you and not as an endorsement by the Owner of any third-party Website or the content thereof. Unless expressly stated, the Owner does not operate any third-party Website linked to the Website and is not responsible for the content of any third-party Website, nor does it make any representation, warranty, or covenant of any kind regarding any third-party Website including, without limitation, (i) any representation, warranty, or covenant regarding the legality, accuracy, reliability, completeness, timeliness, or suitability of any content on such third-party Websites; (ii) any representation, warranty, or covenant regarding the merchantability and/or fitness for a particular purpose of any third-party Websites or material, content, software, goods, or services located at or made available through such third-party Websites; or (iii) any representation, warranty, or covenant that the operation of such third-party Websites will be uninterrupted or error free, that defects or errors in such third-party Websites will be corrected, or that such third-party Websites will be free from viruses or other harmful components.

While the Owner encourages links to the Website, it does not wish to be linked to or from any third-party Website which contains, posts, or transmits any unlawful or indecent information of any kind, including, without limitation (i) any content constituting or encouraging conduct that would constitute a criminal offense, give rise to civil liability, or otherwise violate any local, state, provincial, territorial, national, international law or regulation which may be damaging or detrimental to the activities, operations, credibility, or integrity of the Owner; or (ii) any Website which contains, posts, or transmits any material or information of any kind which violates or infringes upon the rights of others, including material which is an invasion of privacy or publicity rights, or which is protected by copyright, trademark, or other proprietary rights. The Owner reserves the right to prohibit or refuse to accept any link to the Website, including, without limitation, any link which contains or makes available any content or information of the foregoing nature, at any time. You agree to remove any link you may have to the Website upon the request of the Owner.

[Instruction: Recommended clause if users can make submissions to the website. End of instruction.]

Submissions

The Website may provide features which allow you to post messages and content to designated areas on the Website, to participate in chat groups, to interact with the Owner and other users and to upload files, documents, or other materials ("Submission(s)"). Submissions do not include communications between you and your physician pursuant to the physician-patient relationship. The Owner does not control the content of any Submissions and has no obligation to monitor the Submissions. However, the Owner reserves the right at all times to disclose any information necessary to satisfy any law, regulation, or governmental or law enforcement request, or to edit, refuse to post, or refuse to remove any Submission, in whole or in part, that, in the Owner's sole discretion, are objectionable or in violation of this Agreement. You acknowledge that you alone are responsible for the content of your Submissions and the consequences thereof.

[Instruction: Recommended clause if users can make submissions to the website. End of instruction.]

Rules of conduct regarding Submissions

When using any of the features of the Website which allow you to post, upload, or make Submissions, it is a condition of your use of the Website that you do not:

1. Restrict or inhibit any other user from using and enjoying the Website, interfere or attempt to interfere with the proper workings of the Website, or do anything, which in the sole discretion of the Owner, imposes an unreasonable or disproportionately large load on the Website infrastructure;
2. Post or transmit any unlawful, abusive, defamatory, or obscene information of any kind, including, without limitation, any submission constituting or encouraging conduct that would constitute a criminal offence, give rise to civil liability or otherwise violate any local, state, provincial, territorial, national, or international law or regulation;
3. Post or transmit any Submission, including, without limitation, articles, images, stories, software, or other material, which violates or infringes upon the rights of others, including material which is an invasion of privacy or publicity rights, or which is protected by any intellectual property rights, including, without limitation, copyright, patent, trade secret, trademark, or other proprietary rights herein, or derivative works with respect thereto, without first obtaining permission from the Owner or rights holder;
4. Post or transmit any Submission which contains a virus or other harmful component;
5. Post or transmit "junk mail," "chain letters," unsolicited mass mailing, or "spam"; and
6. Use or "mine" the Website for commercial purposes, including, without limitation, posting, uploading, or transmitting any Submission which contains advertising, which engages in commercial activities, solicitations or sales, or which involves contests, sweepstakes, advertising, and pyramid schemes.

[Instruction: Recommended clause if users can make submissions to the website. End of instruction.]

Grant of licence regarding Submissions

By posting or uploading Submissions to the Website, you grant the Owner a royalty-free, perpetual, non-exclusive, irrevocable, unrestricted, worldwide licence to (i) use, reproduce, store, adapt, translate, modify, make derivative works from, transmit, distribute, publicly perform, or display such Submissions for any purpose; and (ii) to sublicense to third parties the unrestricted right to exercise any of the foregoing rights. In addition to the grant of the above licence, you hereby (i) waive all moral rights in your Submission in favour of the Owner; (ii) consent to your name, address, and e-mail appearing as the contributor of your submission, where applicable, and to the disclosure and display of such information and any other information which appears in or is associated with your Submission; (iii) acknowledge and agree that the Owner is not responsible for any loss, damage, or corruption that may occur to your Submission; and (iv) acknowledge and agree that your Submission will be non-confidential.

[Instruction: Recommended clause if there is a "patients/users only" portion of the site or if an "account" must be established to make submissions to the website. End of instruction.]

Registration

To use certain features of the Website, you may be asked to create an account with the Website. When you register with the Website, you agree (i) to provide true, accurate, current, and complete information about yourself as prompted by any registration form; and (ii) to maintain and promptly update the information to ensure it remains true, accurate, current, and complete. If the Owner has reasonable grounds to suspect that such information is untrue, inaccurate, not current or incomplete, the Owner has the right to suspend or terminate your access to all or part of the Website. The Owner's use of any personally identifying information you provide as part of the registration process is governed by the terms of our Privacy Policy.

[Instruction: Recommended clause if there is a "patients/users only" portion of the site or if an "account" must be established to make submissions to the website. End of instruction.]

Passwords

You are responsible for maintaining the confidentiality of the Password you use in association with your account and are responsible for all activities that occur under your User Name and Password. You agree to notify the Owner immediately of any unauthorized use of your Password or account or any other breach of security, and to ensure that you exit from your account at the end of each session. The Owner will not be liable for any loss or damage arising from the Owner's failure or your failure to protect your Password or account information.

[Instruction: Recommended clause if there is specific software used on the site or downloadable from the site. End of instruction.]

Software licence and ownership

All software embedded in or located on or at the Website, including, without limitation, all computer code of all types, including all files and/or images contained in or generated by such software ("Software") is protected by copyright and may be protected by other rights. All such Software is owned by the Owner, its licensors, or the party accredited with ownership of such Software. You are hereby granted the right to access and use the Software embedded and integrated into the Website, subject to (i) the terms and conditions of this Agreement; and (ii) any additional conditions which may be imposed on your access and use of such Software.

If the Website provides Software for download, unless otherwise provided, you are hereby granted, subject to the terms of this Agreement and to any other specific terms and conditions that may apply to your downloading and use of such Software, a personal, non-transferable, non-exclusive licence to (i) install and run one copy of the Software in object code format on a non-networked computer for your personal, non-commercial use; and (ii) to reproduce the Software only as reasonably required to install, run, and make reasonable backup copies as allowed by law.

Except to the extent expressly permitted in this Agreement, you may not (i) use, reproduce, modify, adapt, translate, upload, download, or transmit the Software in whole or in part; (ii) sell, rent, lease, license, transfer, or otherwise provide access to the Software; (iii) alter, remove, or cover any trademarks or proprietary notices included in the Software; and/or (iv) decompile, disassemble, decrypt, extract, or reverse engineer the Software or assist others in doing so.

Other than the limited licence granted herein, nothing contained in the Website shall be construed as granting you any right, title, interest, or other licence in or to any Software embedded or integrated into the Website or made available for download from the Website, including, but not limited, to any intellectual property rights in the Software.

All Software embedded or integrated into the Website is provided "as is," without warranties of any kind, either expressed or implied, including, without limitation, any warranty (i) that the Software is of merchantable quality and/or is fit for any particular purpose; (ii) that the Software will conform with any specification(s) relating to the Software; (iii) that the Software will be free from material defects; (iv) that the Software contains no computer viruses or other contaminants; or (v) that the Software shall process date and time-related data without causing any processing interruptions, abnormal termination, or process or manipulate any time-related data.

[Instruction: Recommended clause if the website contains tools or calculators. End of instruction.]

Tools

Any tools or calculators provided on the Website are provided for general and illustrative purposes only. Such tools and/or calculators are not medical advice nor are they intended to be a substitute therefor. You should not act or abstain from acting based on any information provided by any such tool or calculator available on this Website.

Security

Any information sent or received over the Internet is generally not secure. The Owner cannot guarantee the security or confidentiality of any communication to or from the Website.

Modification to Website

The Owner reserves the right any time, and from time to time, to modify or discontinue, temporarily or permanently, the Website (or any part thereof) with or without notice to you. The Owner shall have no liability to you or any third party for any modifications, suspension, or discontinuance of the Website or any part thereof.

Use prohibited where contrary to law

Use of this Website is unauthorized in any jurisdiction where the Website or any of the Content may violate any laws or regulations. You agree not to access or use the Website in such jurisdictions. You agree that you are responsible for compliance with all applicable laws or regulations. Any contravention of this provision (or any provision of this Agreement) is entirely at your own risk.

Governing law and jurisdiction

The Website is operated by the Owner from its offices within the province of *[relevant Canadian province or territory]*, Canada. *[Name(s) of owner physician(s)]* is/are licensed by *[organization]* to practise medicine in *[jurisdiction]*. You agree that all matters relating to your access or use of the Website and its Content shall be governed by the laws of the province or territory of *[jurisdiction]* and the laws of Canada applicable therein, without regard to conflict of laws principles. You agree and hereby submit to the exclusive and preferential jurisdiction of the courts of the province of *[jurisdiction]* with respect to all matters relating to your access and use of the Website and the Content as well as any dispute that may arise therefrom and that the applicable law shall be the law of the province of *[jurisdiction]* and of Canada.

Waiver

Any consent by the Owner to, or waiver of, a breach of this Agreement which you have committed, whether express or implied, shall not constitute a consent to, or waiver of any other, different or subsequent breach.

Severability

The invalidity or unenforceability of any provision of this Agreement or any covenant contained herein shall not affect the validity or enforceability of any other provision or covenant contained herein and any such invalid provision or covenant shall be deemed severable from the rest of this Agreement.

Notice

Questions or comments regarding the Website should be directed by email to *[name and email]*.

Termination

The Owner may, in its sole discretion, cancel or terminate your right to use the Website, or any part of the Website, at any time without notice. In the event of termination, you are no longer authorized to access the Website, or the part of the Website affected by such cancellation or termination. The restrictions imposed on you with respect to material downloaded from the Website and the disclaimers and limitations of liabilities set forth in this Agreement, shall survive termination of this Agreement. The Owner shall not be liable to any party for such termination.

Entire Agreement

This is the entire Agreement between you and the Owner relating to your access and use of the Website.