

WEBSITE DESIGN, HOSTING SERVICE AND MEDICAL LIBRARY LICENSE

Terms and Conditions

The following Terms and Conditions are incorporated by reference in the iHealthSpot Website Design, Hosting Service and Medical Library Licensing Agreements and iHealthSpot MD Presence™ Provider Plus Agreements (“Agreement”) entered into by iHealthSpot, Inc., dba iHealthSpot Interactive (“iHealthSpot”) and Client under which iHealthSpot shall provide Client with its MD Presence™ website solution, (“Website”), and Website Hosting, Medical Library License and other licenses and service elements, (“Service” or “Services”).

1. Terms of Service

- a. iHealthSpot reserves the right to modify the Service and terms and conditions by providing Client with thirty (30) days written notice or to discontinue the Service by providing Client with ninety (90) days written notice.
- b. Client’s Website shall reside in a shared server environment. iHealthSpot reserves the right at its sole discretion to suspend Service in the event that the volume of website traffic generated through Client’s Website negatively impacts other websites hosted by iHealthSpot. In such event, iHealthSpot shall promptly contact Client in order to determine the cause and discuss a more suitable platform, if necessary, for hosting Client’s Website.
- c. Client is responsible for providing and maintaining its internal computer equipment and access to the Internet.

2. Hosting

- a. Use Limitations
 - i. The Agreement does not convey to Client any interest, title, or license in a userID, email address, or URL within the iHealthSpot.com domain or the domain of an iHealthSpot affiliate, or any iHealthSpot domain name or IP Address used by Client in connection with the Service.
 - ii. Client agrees to adhere to iHealthSpot’s Acceptable Use Policy, incorporated by reference in the Agreement and published on iHealthSpot’s website, www.iHealthSpot.com. iHealthSpot’s services may not be used in any way which violates Federal, State, Local, or International law. In the event of a violation, iHealthSpot reserves the right to immediately suspend or terminate Services.
 - iii. Client agrees to use the Service including the use of Forms only for Client’s own practice.
- b. Analytic Reports: If Client wishes to make use of its own analytic account to measure monthly traffic to the Website, Client agrees to provide iHealthSpot with access to Client’s account.
- c. Continuity of Service: Client understands and agrees that temporary interruptions including periodic maintenance may occur as normal events, and that iHealthSpot has no control over third party networks and upstream service providers, or interruption of network transmissions. Website will have at least 99.4% uptime, as measured monthly, excluding maintenance. In the event that Website is available less than 99.4% of the time in the month, Client shall receive a pro-rata credit for lost time in that month.

3. Limitation of Liability

- a. iHealthSpot will make reasonable efforts to provide continuous, uninterrupted, expedient and error-free Service to Client. iHealthSpot warrants that it will perform its services with professional thoroughness and competence. No other warranty or representation, whether express or implied, is created by this Agreement. Under no circumstances shall iHealthSpot be liable to Client or any other party for any special, incidental, consequential or punitive damages, including loss of profits or income, or cost of replacement Service. iHealthSpot’s sole liability, and Client’s sole remedy shall be limited to (i) having iHealthSpot bear the reasonable cost of redoing any Website that does not meet the above warranty, or (ii) an amount equal to the amounts paid by Client for Service during the period which Service is affected for damages caused by extraordinary and unreasonable interruptions of Service, or mistakes, omissions, delays, errors, defects, deletion of files or e-mail, or loss of or damage to data in the provision of the Service. CLIENT HEREBY ACKNOWLEDGES THAT THIS PROVISION WILL APPLY WHETHER OR NOT IHEALTHSPOT IS GIVEN NOTICE OF THE POSSIBILITY OF SUCH DAMAGES.
- b. Through Client’s use of the Service, including through the use of forms and email, Client may engage in transactions with other parties. Client acknowledges that all transactions resulting from use of the Service are agreed to solely between Client and the other parties. IHEALTHSPOT MAKES NO WARRANTY REGARDING ANY TRANSACTIONS EXECUTED THROUGH, OR IN CONNECTION WITH THE SERVICE, AND CLIENT UNDERSTANDS AND AGREES THAT SUCH TRANSACTIONS ARE CONDUCTED ENTIRELY AT CLIENTS OWN RISK. Client is solely responsible for completion of transactions and collecting payments, including taxes, and for security and storage of any transaction records.
- c. Client is solely responsible for all copy, images and content that Client loads into Client’s Website.

4. Medical Library

By selecting the appropriate Website Hosting Package, iHealthSpot grants Client for the term of this Agreement a nonexclusive, nontransferable license to display and use iHealthSpot’s medical library, including written content, written articles, illustrations, animations and video (“Medical Library”) pursuant to the following terms and conditions:

- a. Medical Library is the Registered Copyright of iHealthSpot and iHealthSpot retains all right, title and interest in the Medical Library. Client only has a license to display and use the Medical Library and may not copy or use Medical Library separately from the Website except as a printed handout for Client’s patients.
- b. Medical Library may not be shared, resold, sub-licensed or included in any product designed for resale.
- c. Client understands and agrees that the Medical Library is to be used only to educate consumers on various health conditions. Medical Library is not to be used by Client or anyone else in Client’s service to provide or instruct on medical diagnosis or treatment.

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- d. Medical Library may not be complete or current. It does not cover all diseases, physical conditions, ailments or treatments. The Medical Library should not be relied upon to determine diagnosis or course of treatment and should not be used in place of an individual consultation, examination, visit or call with a physician or other qualified health care provider. By providing the Medical Library, neither iHealthSpot nor those who write and review the Medical Library are directly or indirectly practicing medicine or dispensing medical services through Client's website.
 - e. Client may use the Medical Library only during the term of this Agreement. Upon termination of this Agreement Client's license shall cease and Client shall discontinue all use of the Medical Library.
 - f. iHealthSpot warrants that it has full power and authority to grant the rights granted by this Agreement to Client and that no consent of any other person or entity is required by iHealthSpot to grant such rights other than consents that have been obtained and are in effect.
5. Licenses and Proprietary Rights
- a. iHealthSpot Intellectual Property: iHealthSpot shall retain all right, title and interest, including copyright and other proprietary or intellectual property rights, in the Service, Medical Library and all legally protectable elements, derivative works, modifications and enhancements thereto.
 - b. Proprietary and Third Party Applications: In the event that the Website or Service contains proprietary or third party owned applications, rights of ownership to such applications remain the property of their respective owners.
6. Indemnity
- a. Client agrees to indemnify and hold iHealthSpot and its employees, contractors, principals, contributors and affiliates harmless from all third party claims, losses, liens, expenses, suits and attorneys' fees, ("Liabilities"), of any kind including for injuries to or death of any person which may in any way arise out of or result from or in connection with Client's use of the Services or use of the Service by Client that constitutes a violation of iHealthSpot's Acceptable Use Policy.
 - b. Client represents and guarantees that Client Content provided to iHealthSpot for inclusion in the Website is owned by Client, or that Client has permission from the rightful owner to use such Client Content, and agrees to indemnify and hold iHealthSpot and its affiliates harmless from Liabilities arising from infringement of copyright, trademark or other proprietary right(s) held by any third party in respect of Client Content.
 - c. iHealthSpot shall indemnify, defend and hold Client harmless from Liabilities to the extent caused by (i) active negligence or willful misconduct of iHealthSpot or (ii) infringement or misappropriation by the Services or any materials created by iHealthSpot hereunder of any patent, copyright, trademark, trade secret or other proprietary right(s) held by any third party. Client shall have the right to participate, at its own expense, in iHealthSpot's defense of any claim affecting iHealthSpot's obligation to indemnify Client.
7. Force Majeure
- Neither iHealthSpot nor Client shall be responsible for damages or for delays or failures in performance resulting from acts or occurrences beyond their reasonable control, including, without limitation: fire, hurricane, flood, lightning, explosion, power surge or failure, civil commotion, act of God, war, governmental restriction or labor unrest. iHealthSpot agrees to abate Service fees if delay or failure in performance exceeds ten (10) days.
8. Notices
- Notices in connection with this Agreement shall be served on the Party to whom directed as follows:
- | | |
|---|-------------------------------|
| iHealthSpot, Inc: | Client: |
| 39555 Orchard Hill Place, Suite 445
Novi, MI 48375 | As specified in the Agreement |
9. General
- This Agreement shall be construed in accordance with the Laws of the State of Michigan.