

# iHealthSpot Patient Portal

## Terms and Conditions

The following Terms and Conditions are incorporated by reference in the Patient Portal Licensing Agreement (“Agreement”) entered into between iHealthSpot, Inc., doing business as iHealthSpot Interactive (hereinafter referred to as “iHealthSpot”), and Client. Use of the iHealthSpot Patient Portal (“Portal”) by Client and the providing of the Patient Portal Service (“Service”) by iHealthSpot to Client are governed by these Terms and Conditions in addition to those contained in the Agreement. In the event that any of the following Terms and Conditions conflict with those contained in the Agreement, the Terms and Conditions set forth herein shall govern.

### 1. Definitions

- a. “Provider” shall mean a licensed provider of medical or health services in Client’s practice, including, but not limited to a physician, a physician assistant, a nurse practitioner, a physical therapist or a psychotherapist.
- b. “Authorized User” shall mean Providers, for whom Client has paid the applicable license fee, and staff members authorized by Client to access and use the Service.
- c. “Authorized Patient” shall mean a person seeking health care, or legal guardian of such person, and who, prior to using the Service, has been determined by Client to have a patient-physician relationship with Client, and has a user ID and password authorized by Client.
- d. “Confidential Information” shall mean any information that is confidential, proprietary or trade secret information of iHealthSpot or Client, including but not limited to Client lists, patient lists, pricing information, or information regarding the disclosing party’s business planning or operations, or any other information the use of or disclosure of which is prohibited or restricted by reason of any contract, court order, law or other obligation, including Protected Health Information under the Standards for Privacy of Individually Identifiable Health Information, the Privacy Rule, and the Security Standards, the Security Rule, published by the U.S. Department of Health and Human Services, at 45 C.F.R. parts 160 through 164 under the Health Insurance Portability and Accountability Act of 1996. Confidential Information shall not include such information that is available in the public domain or otherwise lawfully made public.

### 2. Service

- a. iHealthSpot shall use commercially reasonable efforts to provide the Service in accordance with the terms and conditions of the Agreement.
- b. iHealthSpot shall set up the Portal and shall train Client’s Providers and staff in the use of the Service. Additional training may be provided from time to time at Client’s request, which may result in additional charges based on iHealthSpot’s then current hourly rates.
- c. iHealthSpot shall provide support to Authorized Users via a User Guide, by telephone during normal business hours, and by email to [support@ihealthspot.com](mailto:support@ihealthspot.com).
- d. Client’s Portal uses SSL encryption for security. SSL encryption is provided by iHealthSpot’s Wildcard Secure Encryption Certificate. Client may request its own SSL certificate, whereupon additional setup and maintenance fees shall apply.
- e. Service will have at least 99.4% uptime, as measured monthly, excluding maintenance. In the event that Service 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. 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.

### 3. Licenses and Proprietary Rights

- a. Grant of license to Client in Section 3 of the Agreement is for access to, and use of Portal by Client and its Authorized Users and Authorized Patients. The Portal is not for use by any third party practice. Monthly license fee is determined by the number of licenses issued and indicated in Addendum A of the Agreement. The number of licenses issued by iHealthSpot, or the per-license fee charged by iHealthSpot is based on the number of Providers advised to iHealthSpot by Client. Client shall notify iHealthSpot in the event there is a change to its number of Providers.
- b. iHealthSpot shall retain all right, title and interest, including copyright and other proprietary or intellectual property rights, in the Service and all legally protectable elements, derivative works, modifications and enhancements thereto.

- c. 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.
  - d. In the event that the Service contains third party owned applications, rights of ownership to such applications remain the property of their respective owners.
  - e. Client will not, and will not allow any third party to decompile, disassemble, reverse engineer or attempt to reconstruct or identify any source code or underlying processes or techniques of the Portal or Service.
  - f. Client shall not sublicense, transfer or assign the Service or any of the rights or licenses granted under this Agreement.
  - g. Client shall retain all right, title and interest in Client's own content, trademarks, service marks and medical records.
  - h. Client agrees to allow iHealthSpot to display and transmit on and via the Internet Client trademarks and service marks in the form and manner specified by Client, solely in connection with the Service provided hereunder.
4. Use of Service
- a. Client shall not use the Service for storage, possession, or transmission of any information, the possession or transmission of which violates any local, state or federal law.
  - b. Client understands that the Service is not designed for medical emergencies. Client agrees to inform its Authorized Patients that the Service is not designed for emergency use.
  - c. Client agrees that only Providers shall assess, diagnose, and recommend treatment for its patients and acknowledges and agrees that iHealthSpot is not engaged in the practice of medicine through the provisions of the Service herein. Client shall take all actions necessary to ensure that its use of the Service is in compliance with all regulations, including applicable laws, rules and professional standards, and shall take reasonable precautions to ensure that the Service is utilized by its Authorized Users and Authorized Patients in a manner consistent with such regulations. IHEALTHSPOT SHALL HAVE NO OBLIGATION, RESPONSIBILITY OR LIABILITY FOR ANY PROVIDER'S PROVISION OF PROFESSIONAL SERVICES.
  - d. Client shall be solely responsible for the security of the Client's own Operating Environment.
  - e. Client understands that the Service is not intended as the primary storage of communications between Client and Authorized Patient. Client understands that all forms of communication through the Portal, including but not limited to secure forms and secure messaging, shall be downloaded and saved in Client's patient record system.
5. Medical Library
- 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 or Portal 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.
  - 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 the Agreement. Upon termination of the Agreement Client's license shall cease and Client shall discontinue all use of the Medical Library.
6. Warranties and 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, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, COMPATIBILITY OR SECURITY, is created by this Agreement.
  - b. iHealthSpot shall under no circumstances 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 repairing any part of the Service 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 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.

- c. Through Client's use of the Service, 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.

## 7. Indemnity

- a. iHealthSpot shall indemnify, defend and hold Client harmless from all third party claims, losses, liens, expenses, suits and reasonable attorneys fees, ("Liabilities"), to the extent caused by (i) active negligence or willful misconduct of iHealthSpot or (ii) infringement or misappropriation by the Service as a result of 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. iHealthSpot shall have no obligation to indemnify Client for Liabilities resulting from Client's use of Service, or infringement or misappropriation of any patent, copyright, trademark, trade secret or other proprietary right(s) held by any third party as a result of Client's use of the Service.
- b. Client agrees to indemnify, defend and hold iHealthSpot and its employees, contractors, principals, contributors and affiliates harmless from all third party claims, losses, liens, expenses, suits and reasonable 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 (i) Client's use of the Service or (ii) use of the Service by Client that constitutes a breach of the Agreement, or (iii) Client's failure to comply with regulations including applicable laws, rules and professional standards.

## 8. Confidential Information

- a. Except as expressly permitted in this Section 8, each party shall secure and protect the Confidential Information of the other party, (including, without limitation, the terms of the Agreement) in a manner consistent with the steps taken to protect its own Confidential Information.
- b. Either party may disclose Confidential Information of the other party where the disclosure is required by applicable law or regulation or by an order of a court or other governmental body having jurisdiction after giving reasonable notice to the other party with sufficient time for such party to seek a protective order.
- c. Confidential Information shall not be deemed Confidential Information if such information becomes publicly known or otherwise ceases to be secret or confidential, except through a breach of this Agreement by the receiving party, or if such information was known or becomes known (independently of disclosure by the disclosing party) to the receiving party.

## 9. Severability

If any provision of the Agreement or the application thereof to any person or circumstance shall at any time or to any extent be determined to be invalid or unenforceable, the remaining provisions of the Agreement shall not be affected and shall be deemed valid and fully enforceable to the extent permitted by law, and the Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted.

## 10. Waiver

The waiver by either party of strict performance or breach of any provision of the Agreement shall not be considered to be a waiver of any such right to strict performance of any provision or of any other or subsequent breach of any provision the Agreement.

## 11. Survival

All provisions of the Agreement relating to proprietary rights, confidentiality and non-disclosure, indemnification and limitation of liability shall survive the completion of Service or termination of the Agreement.

12. 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, earthquake, flood, lightning, explosion, power surge or failure, civil commotion, act of God, war, governmental restriction or labor unrest.

13. Notices

Notices in connection with this Agreement shall be in writing and served on Client at the address set forth in Addendum A of the Agreement, and on iHealthSpot at the address provided in its website [www.ihealthspot.com](http://www.ihealthspot.com).

14. Entire Agreement

The Agreement and any exhibits and schedules attached hereto, constitutes the entire agreement between iHealthSpot and Client in respect of the Service and there are no warranties, representations and/or agreements among the parties in conjunction with the Service except as set forth in the Agreement.