

Terms of Service - Clinics

Last updated 11 January 2019



Hi there, we're HotDoc and these are our Terms of Service. They form a contract between you (and your clinic) and us, so please read them carefully before using or accessing the HotDoc platform and its functionalities. Because we actually want you to read these Terms, we've included some explanations in green (like this one). While we hope they will help you to identify some key points, they don't technically form part of the Terms – so please don't rely on them instead of reading the Terms in full. Feel free to contact us if you have any questions or feedback about these Terms.

1. Background

- 1.1 HotDoc Online Pty Ltd ABN 84 159 662 558 (**We, Our or Us**) provides the HotDoc online platform that enables Clinics to manage medical appointment bookings, communicate with their Patients, and utilise other related functionalities (the **Platform**).
- 1.2 In these Terms, a reference to **You** or **Your** is a reference to a Clinic or a Clinic User of the Platform, as applicable.
- 1.3 Together with any Software User Agreement, these Terms set out the basis on which We permit You to access the Platform. By accessing and using the Platform, You agree to be bound by these Terms, as amended from time to time.
- 1.4 We may amend these Terms at any time by publishing the amended version on Our website or by otherwise providing written notice to You. Any such amended version will apply to Your Use of the Platform from the date of its publication or Our written notice to you.

We're always striving to improve the platform. Because we want these Terms to stay relevant, we might need to update or change them every now and then. We'll publish any updated versions on our website and let you know if there are significant changes you'd probably want to know about.

2. Your access to the platform

- 2.1 Subject to these Terms and the terms of any Software User Agreement, We grant You a limited, non-exclusive and revocable licence to access and use the Platform during the Subscription Period, on the basis that you:
 - (a) will comply with these Terms and the Software User Agreement at all times; and
 - (b) will comply with any reasonable request by Us in relation to Your use and access of the Platform.
- 2.2 While we take all reasonable steps to limit any interruptions to Your access to the Platform, You acknowledge and agree that:
 - (a) We may modify, upgrade, update, enhance or alter the Platform from time to time, however if We reasonably anticipate that such change is likely to detrimentally affect Your or the Patient Users' use, or reduce the functionality, of the Platform, then We will in good faith consult with You before implementing the change; and

- (b) We cannot, and do not, promise continuous or error-free access to the Platform. However, We will use our reasonable endeavours to minimise the occurrence and duration of any outages, downtime (for planned maintenance or otherwise) or other causes of inaccessibility to the Platform.

We work hard to keep the platform functioning, and we think we're pretty good at this. But, as with all techy stuff, you need to accept that issues can happen which may make it difficult to access the platform at a particular time.

3. Account management

- 3.1 You acknowledge that:
 - (a) in order to access the Platform, You must register an Account; and
 - (b) We may set registration requirements, in Our sole discretion.
- 3.2 You agree and accept that:
 - (a) You are responsible for correctly setting up Your Account, and for any information that You (or any third party authorised by You) enter into the Platform; and
 - (b) You are responsible for correctly setting up Your Account, and for the accuracy and suitability of any information that You or Your authorised representatives (including any Clinic User) upload to, or transmit via, the Platform.
- 3.3 Any person who registers an Account in the Platform warrants that they are an authorised representative of the Clinic, with the requisite authority to bind the Clinic to these Terms.

To use our platform, and protect your information, you'll need to register an account (which is easy to do). Once this is set up, you will be acting on behalf of your clinic when you access the platform.

4. Acceptable use and your obligations

- 4.1 You must only use the Platform for its intended purpose, as described in these Terms and in the Software User Agreement.
- 4.2 In accessing or using the Platform, You must:
 - (a) comply with Our directions and restrictions regarding access to and use of the Platform, including, where applicable, any instructions to remove any information or data from the Platform;
 - (b) ensure that all information provided or uploaded to Us or the Platform, including any data or information about Patients, is and remains true and correct;
 - (c) ensure that You have obtained all relevant licences, permissions, authorisations, consents and approvals, and complied with all relevant laws, in order to access and use the Platform;
 - (d) ensure that You comply with any relevant statutes, regulations, laws and codes of practice when using the Platform, such as (but not limited to) when You:

- (i) send Recalls, Reminders or other communications to Patients under 18 years of age; and
 - (ii) process and respond to a Repeats request which is received from a Patient User via the Platform;
- (e) not use or rely upon the Platform in relation to, any critical, emergency or acute care medical circumstances;
 - (f) not permit any unauthorised person to access or use the Platform;
 - (g) immediately cease any use of the Platform that, in Our reasonable opinion, does not constitute acceptable use and has been detailed in a notice from Us to You;
 - (h) if You become aware of any actual or potential misuse of the Platform by Clinic Users, Patient Users, or any other third parties, notify Us in writing as soon as reasonably possible;
 - (i) use the Platform for lawful purposes only, and not rent, lease, convey, adapt, translate, reverse engineer, de-compile or disassemble all or any part of the Platform;
 - (j) not infringe any person's rights, including intellectual property and proprietary rights, rights of confidentiality or contractual rights;
 - (k) not include any material that contains any virus or harmful code, or program that is designed to impair the performance of the Platform or any device accessing the Platform; and
 - (l) not publish or link to any malicious content, or engage in conduct that is unlawful, defamatory, obscene, threatening, harassing, abusive, slanderous, hateful or embarrassing to any other person, or which is reasonably likely to damage Our reputation or Our products and services.

4.3 You are solely responsible for determining that the Platform meets the needs of Your business and is suitable for the purposes for which it is, or is intended to be, used by You.

We really love our platform, and we want to protect it and our users – so if you don't comply with the above list of very important things, it might just break our hearts (and get you into legal strife). And while it's a great platform, it's not a doctor or a lawyer – don't rely on it in critical situations, and don't disregard any laws or codes of conduct which apply to how your clinic operates.

5. Third party services and information

5.1 You acknowledge that:

- (a) the Platform is dependent on third-party services, including but not limited to:
 - (i) banks, credit card providers and BPAY;
 - (ii) telecommunications services;
 - (iii) hosting services;
 - (iv) email services; and
 - (v) analytics services; and

(b) the Platform provides links to third party websites which may contain (without limitation) clinical guidance or information.

5.2 You agree that We are not responsible or liable in any way for:

(a) interruptions to the availability of the Platform due to third-party services; or

(b) information contained on any linked third party website.

5.3 If You engage other suppliers to provide you with products or services which relate to the Platform, You agree that We are not responsible for the performance of any other suppliers.

Sometimes we need to work with third parties to bring our platform to you, including your providers. While we've chosen our providers because we think they're great (and we assume you have too), we can't be responsible for the way they operate.

6. Data

6.1 We take the security of the Platform and the privacy of its Users very seriously. You agree that:

(a) You will not do anything to prejudice the security or privacy of Our systems or of the information on Our systems;

(b) You are solely responsible for the security of Your login details for accessing the Platform; and

(c) You will notify Us immediately if You become aware of any unauthorised access to the Platform.

Keep your login details safe, and report any security issues or concerns to us. And (this is important), make sure you do the right thing in terms of keeping the platform secure.

6.2 We will do all things reasonable to ensure that the transmission of data occurs according to accepted industry standard, however You accept that the internet is not a fully secure environment and we cannot accept responsibility for misuse or loss of, or unauthorised access to or disclosure of, information where the security of the information is not within our control. If You provide Us with information via the internet, You do so accepting this risk.

Like most ways of sending messages, the internet is not without risk. It's important for you to be aware of this, and to understand that some risks (like hacking) can be outside of our control.

6.3 We may limit the amount of data that You can store in the Platform, and will advise You of such limitation. Data that is stored within the Platform will be stored according to accepted industry standards.

6.4 We will perform backups of the Platform in a reasonable manner at such times and intervals as are reasonable for Our business purposes. We do not warrant that We are able to backup or recover specific User content from any period of time, unless so stated in writing by Us.

- 6.5 You acknowledge and agree that:
- (a) We are not responsible in any way for retaining any data, Personal Information or Health Information that has been stored on, or communicated through, the Platform for a prescribed period; and
 - (b) You must ensure that all Health Information or health records of Your Patients are stored on your own systems and retained in accordance with applicable laws.

We don't store data indefinitely, or for prescribed periods of time. It's really important that any information that you or your clinic might need to retain (especially health records) is separately stored on your local systems.

7. Privacy

- 7.1 You acknowledge and agree that:
- (a) in order to provide You and Clinic Users with access to and the functionality of the Platform, we may need to collect and use the Personal Information of Clinic Users;
 - (b) We will collect and handle any Personal Information and Health Information of all Users and Patients in accordance with:
 - (i) Our Privacy Policy located at <http://www.hotdoc.com.au/privacy-policy> (Privacy Policy), as amended from time to time; and
 - (ii) applicable privacy laws;
 - (c) Our Privacy Policy does not cover or address how You handle any Personal Information. You must ensure that you have, and will continue to maintain, a privacy policy which:
 - (i) complies with applicable privacy laws; and
 - (ii) provides an accurate representation to Patients about the data flow of any Personal Information which occurs between You and Us and via the Platform;
 - (d) You must ensure that any Personal Information or Health Information You create or have access to as a result of Your use of the Platform is collected, handled and retained by You in accordance with applicable privacy laws in relevant jurisdictions;
 - (e) You must only use or disclose Personal Information or Health Information which is collected by Us and shared with You for the primary purpose for which that Personal Information or Health Information was collected (being to manage a Booking or otherwise communicate with the relevant individual, depending on the circumstances); and
 - (f) to enable Us to provide you with the full functionality of the Platform and our services, We will collect, synchronise, store and access certain information, including the Personal Information of Your Patients and Users.

- 7.2 Notwithstanding anything else in these Terms or the Software User Agreement, You must ensure that You have:
- (a) obtained all necessary consents from individuals (including Your Patients) whose Personal Information or Health Information may be provided or uploaded to the Platform or to Us directly, prior to providing or uploading that Personal Information or Health Information; and
 - (b) provided all necessary notifications to such individuals in relation to Our collection of their Personal Information or Health Information, as required by applicable privacy laws.
- 7.3 Both You and We must:
- (a) provide reasonable assistance to the other party in relation to any privacy-related complaints or regulatory enquiries; and
 - (b) notify the other party upon becoming aware of an Eligible Data Breach with respect to the Personal Information which is shared between the parties.

Eyes starting to glaze over? Maybe it's time to grab a coffee (or a healthier equivalent!), because the above section is really, really important. It explains what we both need to be doing when collecting, handling and sharing personal and health information, so that everyone is on the same page on the important topic of privacy. While we're at it, you should also read our privacy policy [here](#).

8. Suspension or termination of access

- 8.1 If You fail to comply with these Terms or the Software User Agreement, we may revoke or suspend Your licence and access to the Platform, and cancel or otherwise terminate Your Account.
- 8.2 We may, in Our sole discretion, suspend or revoke an individual Practitioner's licence or ability to access the Platform, including their ability to use the Platform to accept, make or manage Bookings or facilitate other interactions with their Patients.
- 8.3 If Your Account is cancelled or We otherwise permanently end Your access to the Platform, any data or information We collect about Users or Your Patients may be permanently deleted or de-identified.
- 8.4 Termination or expiration of Your licence to access or use the Platform will not affect any accrued rights, indemnities, or any provision of these Terms which are intended by their nature to survive termination or expiration.

If you don't comply with these Terms (and our signed agreement with you), we can suspend or cancel your access to or account for the platform. Also, if a particular practitioner is (in our opinion) unsuitable to use our platform, we may refuse or revoke their access and use. We really hope we won't need to do either of these things (but our lawyers say we need to keep our options open...just in case).

9. Intellectual property

- 9.1 Except as expressly provided in these Terms or the Software User Agreement, no ownership is transferred in, or other rights granted to the other party in, the Intellectual Property of a party. For clarity:
- (a) both You and We and any third party licensors (as the case may be) own and retain all of its Intellectual Property existing prior to the Subscription Period or which is developed independently of the agreement between the parties (Pre-existing IPR), and any developments, updates or modifications to Pre-existing IPR;
 - (b) We own and retain all rights (including Intellectual Property) in and to the Platform; and
 - (c) You own and retain all rights (including Intellectual Property) in and to any data that You upload to or transmit via, the Platform.
- 9.2 Any:
- (a) Intellectual Property developed by Us under or in connection with these Terms or the Software User Agreement; or
 - (b) changes, additions or improvements to the Platform, immediately and directly vests in Us upon its creation and will form part of Our Intellectual Property, unless otherwise agreed in writing between the parties. You otherwise acknowledge and agree that You have no ownership rights, title or interest in or to Our Intellectual Property and must not dispute Our ownership of the same. You must do all acts and things necessary to give effect to this clause 9.2.
- 9.3 You grant Us a non-transferable, non-exclusive and royalty free licence to:
- (a) store and otherwise use, copy or modify any data or material provided by You to Us for the purpose of Our providing you with our services and enabling You and the Patient Users to access and use the Platform; and
 - (b) use Your logos or other branding information or media (in any form) for the purpose of promoting or marketing the Platform.

In terms of who owns what, you own any data you submit to the platform (but you give us a licence to deal with it to enable platform functionalities); and we own the platform itself, including any developments or customisations.

10. Liability and indemnity

- 10.1 To the extent permitted by law, You acknowledge and agree that:
- (a) Your use of the Platform is at Your own risk;
 - (b) We provide the Platform only, and are not responsible or liable for the conduct or activities of any third parties, including Patients and other Users;
 - (c) under no circumstances will We be liable to You for:
 - (i) any illness, injury, or death resulting from use of the Platform; or

- (ii) any other any direct or indirect, incidental or consequential damages, loss or corruption of data, or any other similar or analogous loss resulting from Your access to, use of, or inability to use the Platform or any content, whether based on warranty, contract, tort, negligence, in equity or any other legal theory, and whether or not We knew or should have known of the possibility of such loss.

10.2 You agree to indemnify Us for any loss, damage or claim (including the loss or corruption of data, goodwill, bargain, opportunity or of anticipated savings) that We may suffer or incur as a result of any breach by You of these Terms.

10.3 Certain rights and remedies may be available under the Competition and Consumer Act 2010 (Cth) or similar legislation of other States or Territories and may not be permitted to be excluded, restricted or modified. Apart from those that cannot be excluded, We together with Our related entities exclude all conditions and warranties that may be implied by law, however any liability for breach of any implied warranty or condition that cannot be excluded is restricted, at Our option, to:

- (a) the re-supply of services, or payment of the cost of re-supply of services; or
- (b) the replacement or repair of goods, or payment of the cost of replacement or repair.

While our platform is pretty great, nothing is perfect. Our lawyers tell us it's a good idea to include the above to ensure we're not responsible for actions we can't control or if something goes wrong (such as an inability to use the platform or a technical error). Also, remember how we mentioned the possibility of legal strife earlier? If you breach these Terms, it could cause us significant damage and you'll be responsible for any mess this makes for us (including financial ones!).

11. Interpretation

11.1 The following terms are used regularly throughout these Terms and have a particular meaning:

- (a) **Account** means a registered account for a Clinic which enables access to, and use of certain functionalities of, the Platform.
- (b) **Booking** means an appointment with a Practitioner that is made using the Platform.
- (c) **Business Day** means a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in the city of Melbourne, Victoria, Australia.
- (d) **Clinic** means a medical practice, healthcare practice, Practitioner or other organised or incorporated body that provides healthcare services and has entered into a Software User Agreement or other signed written agreement with Us for access to and use of the Platform.
- (e) **Clinic User** means any individual authorised to use the Platform by a Clinic.
- (f) **Eligible Data Breach** has the meaning given to that term by the Privacy Act.
- (g) **Health Information** has the meaning given to that term by the Privacy Act.
- (h) **Intellectual Property** means all intellectual property rights throughout the world, whether registered or unregistered, including rights in respect of copyright, designs,

circuit layouts, trademarks, know-how, confidential information, patents, inventions and discoveries and right to apply for registration of such rights.

- (i) **Patient** means a person about whom information is stored within the Platform or is otherwise shared You with Us, and who is or has been a patient or consumer of Your health services.
- (j) **Patient User** means any individual who is a patient of, or makes a Booking request for, You or Your Practitioners and who either:
 - (i) accesses the Platform in any way; or
 - (ii) receives a communication from, or otherwise interacts with, You via the Platform.
- (k) **Personal Information** has the meaning given to that term by the Privacy Act.
- (l) **Practitioner** means a medical practitioner, health professional or other individual with whom appointments may be made and managed via the Platform.
- (m) **Privacy Act** means the Privacy Act 1988 (Cth).
- (n) **Recall** means a clinical reminder sent to a Patient via the Platform.
- (o) **Reminder** means an upcoming appointment reminder sent to a Patient via the Platform.
- (p) **Repeats** means the Platform functionality which enables Patients to request a repeat prescription or referral from their Practitioner.
- (q) **Software User Agreement** means, if applicable, the signed written agreement entered into between You and Us for Your access to and use of the Platform and any other services We make available to You from time to time.
- (r) **Subscription Period** means the period during which:
 - (i) a Software User Agreement is effective between You and Us; and
 - (ii) You have paid any fees or other payments which are owed by You to Us in accordance with the Software User Agreement.
- (s) **Terms** means these Terms of Service.
- (t) **User** means any Patient User or Clinic User.

11.2 The following rules apply to any interpretation of these Terms unless the context requires otherwise:

- (a) headings are for convenience only and do not affect interpretation;
- (b) the singular includes the plural and the opposite also applies;
- (c) if a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning;
- (d) a reference to a clause or item refers to clauses and items in these Terms;
- (e) a reference to legislation is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
- (f) mentioning anything after includes, including, or similar expressions, does not limit anything else that might be included;

- (g) a reference to a party to these Terms or another agreement or document includes that party's successors and permitted substitutes and assigns (and, where applicable, the party's legal personal representatives); and
- (h) a reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.

The above sections explain what the capitalised terms we use throughout these Terms mean, and also has some general rules about how this contract should be read. Phew! You made it. Now let's get on with connecting you with your patients!