

# International Consultants in Medicine

## Service Agreement: January 2008

**Prior to enrolling in the service as a Member of any degree, you must agree to the following terms and conditions. You may accept these terms and conditions by clicking on the "I Accept" button at the conclusion of the terms and conditions. You agree that you have read, understand and agree to be bound by this contract. If you do not wish to agree to this contract, do not access or use any part of this website.**

### **1. What the Contract Covers.**

This is a contract between you and the International Consultants in Medicine (ICON). Sometimes the International Consultants in Medicine is referred to as "ICON", "we," "us" or "our". This contract applies to any ICON or iCons in Medicine software, products or services, including updates that you use while this contract is in force. All of the software, products or services and the website are collectively referred to in this contract as the "service."

**PLEASE NOTE** that we do not provide warranties for the service. The contract also limits our liability. These terms are in sections 15 and 16 and we ask you to read them carefully.

### **2. When You May Use the Service.**

You may start using the service as soon as you have finished the sign-up process.

### **3. General Rules, Acceptable Use Policy, Legal Rights Notice and Privacy Policy.**

This contract and your use of this website are subject to and governed by, and all use must be in accordance with, the [ICON General Rules](#), the [Acceptable Use Policy](#), the [Copyright/Trademark Notice](#) and the [Privacy Policy](#), which are incorporated herein. ICON reserves the right to amend these agreements from time to time by posting the amended policies on the iCons in Medicine website. If any changes to the policies are unacceptable to you, please immediately cease your use of the service.

### **4. How ICON May Change This Contract.**

If we change this contract other than changes to the documents identified in section 3, then we will post a notice for Members on the iCons in Medicine website at least 30 days before the change takes place. If you do not agree to these changes, then you must cancel and stop using the service before the change takes place. If you do not stop using the service, then your use of the service will continue under the changed contract.

### **5. How You May Use the Service.**

As a general Member you may use the service to participate in Communities of Practice, forums, listservs, messaging and chat rooms in which to allow participating Members to network and exchange information. As a general Member, you may also apply for participation in the iConsult program if you qualify. The iConsult program refers to the iCons in Medicine Program's Store-and Forward tele-consultation Software and Social Alliance website designed to facilitate the interactions between the health care professionals (Volunteers and Requestors). If approved by an ICON Chapter or Member Organization, you may use the service for the purpose of providing

tele-consultations and/or requesting tele-consultations with respect to patient care, and communicating with iCons in Medicine Members with respect thereto.

You agree to use the iCons in Medicine website for lawful purposes and in compliance with all applicable laws, rules, regulations and policies.

#### **6. Changes to the Service; If We Cancel the Service.**

We may change the service or delete features at any time and for any reason. We may cancel or suspend your service at any time. Our cancellation or suspension may be without cause and/or without notice. Upon service cancellation, your right to use the service stops right away and all health information relative to your account is deleted. Once the service is cancelled or suspended, any data you have stored on the service may not be retrieved later.

#### **7. You Are Responsible For Your Service Account.**

Only you may use your service account. You are responsible for all activity that takes place with your service account. You may not authorize any third party to access and/or use the service on your behalf.

#### **8. Participant Materials on Our Website**

From time to time, the service may permit participants to submit materials (e.g., biographical materials, educational materials, research content, etc.) which may be displayed on our public website or on the website which is available only to Members of iCons in Medicine. Accordingly, you specifically agree that:

(a) That we have the right, but not the obligation, in our sole discretion to prescreen, refuse, move, modify or remove any third party content. We do not regularly do so currently and do not intend to do so in the future, but you nonetheless agree that we have the right to do so with respect to any content you provide. However, you should always assume that we have not pre-screened or validated any content from Members or other third parties. Accordingly, YOU AGREE THAT YOUR USE OF OR RELIANCE UPON ANY SUCH CONTENT IS AT YOUR SOLE RISK AND YOU ARE SOLELY RESPONSIBLE FOR EVALUATING THE ACCURACY, COMPLETENESS OR USEFULNESS OF ANY CONTENT ACCESSED THROUGH THE SERVICE.

(b) Any content and/or opinions uploaded, expressed or submitted to a message board, blog, chat room or any other publicly available section of the iCons in Medicine website (including password-protected areas), and all articles and responses to questions, other than the content provided by ICON, are solely the opinions and responsibility of the person or entity submitting them and do not necessarily reflect the opinions of ICON.

(c) You understand and acknowledge that you are responsible for whatever content you submit, and you, not ICON, have full responsibility for such content, including its legality, reliability, factual accuracy and appropriateness. You agree that you will not misstate your identity, name, or credentials on the iCons in Medicine website or to other iCons in Medicine Members. By uploading or otherwise transmitting material to any area of the iCons in Medicine website, you warrant that the material is your own or is in the public domain or otherwise free of proprietary or other restrictions and that you have the right to post it to the iCons in Medicine website. You grant to ICON the right to use all content you upload or otherwise transmit to the iCons in Medicine website, including, but not limited to, your name and credentials, in any manner ICON chooses, including, but not limited, to copying, displaying, performing or publishing it in any format whatsoever, sublicensing it, modifying it, incorporating it into other material, making a derivative work based on it, or otherwise utilizing the content in iCons in Medicine, our website and the Service, and to attribute your name to such content.

(d) ICON reserves the right, but does not assume any responsibility, to (1) remove any material posted on the iCons in Medicine website which ICON, in its sole discretion, deems inconsistent with the foregoing commitments, including any material the Company has been notified, or has reason to believe, constitutes a copyright infringement; and (2) terminate any user's access to all or part of the iCons in Medicine website. However, ICON can neither review all material before it is posted on the iCons in Medicine website nor ensure prompt removal of objectionable material after it has been posted. Accordingly, ICON assumes no liability for any action or inaction regarding transmissions, communications or content provided by third parties. ICON reserves the right to take any action it deems necessary to protect the personal safety of users of this website and the public; however, ICON has no liability or responsibility to anyone for performance or nonperformance of the activities described in this paragraph.

(e) Your failure to comply with the provisions of this section may result in the termination of your access to the iCons in Medicine website and may expose you to civil and/or criminal liability.

## **9. Patient Privacy.**

This website is not intended for the display or transmission of personally identifiable patient information, and it is our joint understanding that personally identifiable patient information will not be transmitted through this service. In the event that such information should be sent or received, legal requirements covering the communication of patient information vary by jurisdiction. In the United States, the Privacy Requirements of the Health Insurance Portability and Accountability Act (HIPAA), the federal privacy law governing the use and disclosure of personal health information, generally permits the free exchange of health information among health care providers for treatment purposes. With respect to HIPAA, we are acting only as a conduit for the transmission of such data and not as a business associate.

Please note, HIPAA acts only as a "floor" with respect to privacy regulation. Thus, if a local jurisdiction has adopted a law governing the privacy of health care information that is more stringent than HIPAA, then that more stringent law will govern. Please note, many jurisdictions have adopted more stringent privacy laws relating to what is commonly termed "sensitive personal information", which may include, for example, information pertaining to HIV status, mental health status or genetic testing information. You are responsible for complying with the privacy law requirements applicable to your jurisdiction, including obtaining any necessary consents or authorizations from patients, before communicating any health information that may be privileged or protected by law.

All tele-consultations and their content received on the iCons in Medicine servers will be erased 30 days after the completion of a tele-consultation.

## **10. Security; Authentication network.**

You are solely responsible for keeping your service account log-on and password information secure. In the event that you learn of any security breach related to your log-on, password or the service generally, you will notify us promptly.

We may cancel or suspend your account for inactivity, which we define as failing to sign in to our authentication network for an extended period, as determined by us. If we cancel your credentials, your right to use our authentication network immediately ceases.

## **11. Advertisements.**

If your organization is interested in advertising on the iCons in Medicine website, please contact [support@iconsinmed.org](mailto:support@iconsinmed.org).

## **12. Links to Other Sites; References to Third Parties.**

The iCons in Medicine website may contain links to other websites. ICON is not responsible for and does not endorse the content, products, services or practices of any third party websites, including, without limitation, sites framed within the iCons in Medicine website or third party advertisements, and does not make any representations regarding their quality, content or accuracy. Your use of third party websites is at your own risk and subject to the terms and conditions of use for such websites.

## **13. Software.**

If you receive software from us as part of the service, then we grant you the right to use the software for the authorized use of the service as stated in this Service Agreement. We reserve all other rights to the software.

We may post upgrades to the software that you may be required to download to your computer to update, enhance and further develop the service.

You will not disassemble, decompile, or reverse engineer any software included in the service, except and only to the extent that the law expressly permits this activity.

Unless we notify you otherwise, your right to use the software will end on the date your service ends.

## **14. Copyright Restriction / Use of Content.**

The entire contents of this website (including all information, software, text, displays, images and audio) and the design, selection and arrangement thereof, are proprietary to ICON or its affiliates or licensors and are protected by United States and international laws regarding copyrights, trademarks, trade secrets and other proprietary rights. You are authorized only to use the content on the iCons in Medicine website for personal use or legitimate business purposes related to your role as a current or prospective customer, supplier, or distributor of ICON. You may not copy, modify, create derivative works of, publicly display or perform, republish, store, transmit or distribute any of the material on this site without the prior written consent of ICON, except to: (a) store copies of such materials temporarily in RAM, (b) store files that are automatically cached by your web browser for display enhancement purposes, and (c) print a reasonable number of pages of the iCons in Medicine website; provided in each case that you do not alter or remove any copyright or other proprietary notices included in such materials. Neither the title nor any intellectual property rights to any information or material in this website are transferred to you, but remain with ICON or the applicable owner of such content. Except as expressly authorized by ICON in writing, you may not reproduce, sell or exploit for any commercial purposes (a) any part of this website, (b) access to this website or (c) use of this website or of any services or materials available through this website.

## **15. WE MAKE NO WARRANTY; INDEPENDENT MEDICAL JUDGMENT.**

WE PROVIDE THE SERVICE “**AS-IS**,” “**WITH ALL FAULTS**” AND “**AS AVAILABLE**.” WE DO NOT GUARANTEE THE ACCURACY OR TIMELINESS OF INFORMATION AVAILABLE FROM THE SERVICE, OR THAT THE SERVICE WILL BE REGULARLY AVAILABLE ON A 24X7 BASIS OR OTHERWISE OPERATE WITHOUT INTERRUPTION OR ERROR. THE ICON PARTIES GIVE NO EXPRESS WARRANTIES, GUARANTEES OR CONDITIONS. YOU MAY HAVE ADDITIONAL RIGHTS UNDER YOUR LOCAL LAWS THAT THIS CONTRACT CANNOT CHANGE. WE EXPRESSLY DISCLAIM ANY EXPRESS OR IMPLIED WARRANTIES OF ANY

KIND, INCLUDING THOSE OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, WORKMANLIKE EFFORT AND NON-INFRINGEMENT.

You acknowledge and agree that the ICON parties are not providing any medical advice through the service and all content or tele-consultations received through the service are not a substitute for the professional judgment of healthcare providers in diagnosing and treating patients. The ICON parties are not giving medical advice or providing medical or diagnostic services.

#### **16. LIABILITY LIMITATION.**

YOU ACKNOWLEDGE AND AGREE THAT IN NO EVENT SHALL THE ICON PARTIES BE LIABLE TO YOU OR YOUR PATIENTS FOR ANY DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES (INCLUDING LOSS OF USE OR LOST PROFITS) ARISING OUT OF OR OTHERWISE IN CONNECTION WITH THE SERVICE, WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED UPON CONTRACT, WARRANTY, TORT OR OTHERWISE, AND WHETHER OR NOT THE ICON PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE. IN ANY EVENT, THE ICON PARTIES' CUMULATIVE LIABILITY TO YOU AND YOUR PATIENTS FROM ALL CAUSES OF ACTION AND ALL THEORIES OF LIABILITY SHALL NOT EXCEED AN AMOUNT EQUAL TO \$1,000 U.S. DOLLARS. YOU ACKNOWLEDGE AND AGREE THAT THE DISCLAIMERS AND LIMITATIONS OF LIABILITY IN THIS SECTION ARE REASONABLE AND THAT THE ICON PARTIES WOULD NOT HAVE OTHERWISE MADE THE SERVICE AVAILABLE TO YOU IF THE ICON PARTIES COULD BE SUBJECT TO LIABILITY OR DAMAGES IN EXCESS OF THIS PARAGRAPH.

Some jurisdictions do not allow the exclusion or limitation of incidental or consequential damages, so the above limitations or exclusions may not apply to you. They also may not apply to you because your province or country may not allow the exclusion or limitation of incidental, consequential or other damages.

#### **17. Indemnification.**

You agree to indemnify and hold harmless ICON and its officers, directors, employees, agents, affiliates, third party information providers, licensors, contractors and others involved in the iCons in Medicine website or the delivery of products, services or information over the iCons in Medicine website, from and against any and all liabilities, expenses, damages and costs, including reasonable attorney's fees, arising from any violation by you of this Agreement or your use of the iCons in Medicine website or any products, services or information obtained from this website.

#### **18. Your Notices to Us.**

You may notify us as stated in the customer support or "help" area for the service. We do not accept e-mail notices.

#### **19. Notices We Send You; Consent Regarding Electronic Information.**

This contract is in electronic form. We have promised to send you certain information in connection with the service and have the right to send you certain additional information. There may be other information regarding the service that the law requires us to send you. We may send you this information in electronic form. You have the right to withdraw this consent, but if you do, we may cancel your service. We may provide required information to you:

- \* by e-mail at the e-mail address you specified when you signed up for your service;
- \* by access to an ICON website that will be designated in an e-mail notice sent to you at the time the information is available; or
- \* by access to an ICON website that will be generally designated in advance for this purpose.

Notices provided to you via e-mail will be deemed given and received on the transmission date of the e-mail. As long as you can access and use the service, you have the necessary software and hardware to receive these notices. If you do not consent to receive any notices electronically, you must stop using the service.

**20. Assignment.**

We may assign this contract, in whole or in part, at any time with or without notice to you. You may not assign this contract, or any part of it, to any other person. Any attempt by you to do so is void. You may not transfer to anyone else, either temporarily or permanently, any rights to use the service or any part of the service.

**21. No Third Party Beneficiaries.**

This contract is solely for your and our benefit. It is not for the benefit of any other person, except for permitted successors and assigns under this contract.

**22. Choice of Law and Jurisdiction.**

Illinois state law governs the interpretation of this contract and applies to claims for breach of it, regardless of conflict of laws principles. All other claims, including claims regarding consumer protection laws, health information portability laws, and in tort, will be subject to the laws of your state of residence in the United States, or if you live outside the United States, the laws of the country to which we direct your service.

Exclusive jurisdiction over any cause of action arising out of this contract or your use of the iCons in Medicine website shall be in state or federal courts in the Cook County in the State of Illinois. You agree to submit to the jurisdiction and venue of such courts.

All parts of this contract apply to the maximum extent permitted by law. A court may hold that we cannot enforce a part of this contract as written. If this happens, then you and we will replace that part with terms that most closely match the intent of the part that we cannot enforce. The rest of this contract will not change. This is the entire contract between you and us regarding your use of the service. It supersedes any prior contract or statements regarding your use of the service. If you have confidentiality obligations related to the service, those obligations remain in force (for example, you may have been a beta tester). The section titles in the contract do not limit the other terms of this contract.

Any rights not expressly granted herein are reserved.