



hello@patientMoon.com | 855.617.5500

www.patientmoon.com



On behalf of the whole patientMoon team, welcome!

I started patientMoon in 2004 out of a passion for helping small businesses grow, operate more efficiently, and better serve their customers.

Our entire team shares that deep commitment to helping the wellness and fitness community thrive, one partner at a time. And we know the challenges you face when your business is *you* and the services you provide. We've been there ourselves.

We are truly honored to be working together to help you build your business and your livelihood. We take that responsibility to heart with as much commitment and care as if it were our own.

Looking forward to our successes together!

A handwritten signature in black ink that reads "Matthew W. Broude".

Matthew Broude
patientMoon Founder

LET'S GET STARTED!

If you have any questions, just give us a call at **855.617.5500**
or email help@patientmoon.com.

TERMS OF SERVICE

The following Terms of Service (the “Terms”) constitute an agreement (the “Agreement”) by and between you (“CLIENT,” “you,” or “your”) and patientMoon, inc., a Massachusetts corporation, having a place of business at 45 Province Street, Unit 906, Boston, MA 02108 (“patientMoon”, “we,” “our,” or “us”).

These Terms govern your use of patientMoon’s professional services with respect to your and our business relationship, including consulting sessions, work conducted toward your business or marketing goals on your behalf, development of deliverables, and any other work by patientMoon (collectively, the “Services”).

Please read these Terms carefully before you start using any of patientMoon’s Services. By using the Services, you agree to be bound by these Terms. If you disagree with any part of these Terms, then you may not utilize the Services.

1. Changes to these Terms.

- a. **Modifications by patientMoon.** We reserve the right, at our discretion, to change, modify, add, or remove portions of the Terms at any time by posting the amended Terms on our website. We may provide additional notice, such as an e-mail message, of any material changes. Unless we state otherwise, changes are effective when posted. New versions of the Terms and any other policies will be accessible at www.patientmoon.com. If you continue to use the Services after the changes are posted, you are agreeing that the changes apply to your continued use of the Services.
- b. **Modifications by Client.** You can’t make changes to the Terms unless both you and we sign a written amendment.
- c. **Disputes.** If you have a dispute with patientMoon, the version of the Terms in effect at the time patientMoon received actual notice of the dispute will apply to such dispute.

2. Scope of Services.

- a. **Services.** patientMoon will provide to CLIENT business and marketing strategy and implementation, content writing and editing, and/or other assistance for objectives identified by CLIENT. patientMoon resources will be provided on a non-exclusive basis, and work may be performed by multiple patientMoon employees or agents according to patientMoon’s discretion.
- b. **Non-Exclusivity.** These Terms do not impose on CLIENT an obligation to deal exclusively with patientMoon for services similar to the Services, nor do these Terms impose on patientMoon an obligation to provide services similar to the Services solely to CLIENT.

3. **Term.** The term of this Agreement shall commence as of the earlier of the first date you use any of patientMoon’s Services, or the date you click to accept or agree to these Terms when the option is made available to you; and shall continue unless terminated as otherwise provided herein.

4. **Payment Terms and Invoicing.**
 - a. **Fees.** Fees for the Services will be provided to you in writing or by phone at the time of booking or requesting the Services.
 - b. **Expenses.** CLIENT shall pay all expenses for third-party services directly to the providers of those services. When that is not possible, to the extent CLIENT is to pay any expenses of patientMoon in connection with any Services, all such expenses shall be incurred by patientMoon only in accordance with a budget that has been pre-approved in writing or by phone by CLIENT, and all such expenses shall be billed to CLIENT on invoices as defined herein.
 - c. **Payments are Not Refundable.** Consulting Sessions, Consulting Session Packs, unused Consulting Session Pack credits, and Offline Hourly Work are not refundable.
 - d. **Payment in Full Required for Grant of License or Copyright.** The grant of any license or right of copyright set forth in these Terms is conditioned on receipt of full payment for all Services.
 - e. **Default in Payment.** CLIENT shall pay any reasonable legal fees and other costs of collection incurred by patientMoon in the collection of unpaid amounts that are due pursuant to these Terms or any statement of work or other agreement.
 - f. **Currency.** All payments must be made in US Dollars.
5. **Consulting Session Terms.**
 - a. **Billing and Invoicing for Consulting Sessions.** CLIENT shall pay for Consulting Sessions individually or in Packs prior to booking sessions. patientMoon shall provide CLIENT an invoice at the time of purchase of a Consulting Session or Pack, or within a period thereafter at its discretion no greater than monthly in arrears. The invoice shall indicate the quantity of sessions purchased and the fee for such sessions.
 - b. **Consulting Session Pack Expiration.** Consulting Session Pack Credits expire a set time after the purchase of the Pack. Any unused Credits will be forfeited as of the expiration date. Consulting Session 4-Packs have a 6-month expiration, and 10-Packs have a 12-month expiration.
 - c. **Two-at-Once Consulting Sessions.** As a two-at-once session is a session with two patientMoon team members at once, it will also use two of your Consulting Session Credits.
 - d. **Cancellation of Consulting Sessions.** Consulting Session time slots are at a premium and are often booked days or weeks in advance. If you reschedule, you are essentially taking two time slots. If you cancel, that spot is often not fillable at the last minute. As a result, appointments cannot be rescheduled, and cancellations will not be refunded. If a new time is needed, payment will be required for that second meeting time.
6. **Offline Hourly Work Terms.** patientMoon will provide to CLIENT business and/or marketing strategy and/or implementation, content writing and/or editing, and/or other assistance for objectives identified by CLIENT on an hourly basis billed in quarter-hour increments for each patientMoon employee or agent participating in the work (hereinafter, "Offline Hourly Work"). Payment is due at the time of services rendered, and will be automatically billed to CLIENT's payment information on file. patientMoon shall provide CLIENT an invoice at the time Offline Hourly Work is performed, or within a period thereafter at its discretion no greater than monthly in arrears. The invoice shall indicate the nature of the work performed, the fee for such work, and any expenses incurred by patientMoon, consistent with the provisions of these Terms.

7. **Confidentiality of CLIENT Information.**

- a. patientMoon acknowledges and agrees that it may have access to and may come into contact with confidential information which is the property of CLIENT and its affiliates (collectively, the “Confidential Information”) pursuant to the performance of work covered in these Terms or any statement of work. patientMoon shall not disclose any Confidential Information to any person, entity, firm, or company in any manner other than to perform the services for CLIENT as described in Section 1.1 above, unless compelled by governmental process (provided that if so compelled, patientMoon shall give CLIENT prompt written notice of such requirement prior to disclosure so as to provide CLIENT the opportunity to protect its Confidential Information).
- b. Notwithstanding anything to the contrary set forth in these Terms, Confidential Information does not include information that (a) is or becomes generally available to the public other than as a result of a disclosure by patientMoon in breach of these Terms, (b) was available to patientMoon on a non-confidential basis prior to its disclosure hereunder, (c) becomes available on a non-confidential basis from a source other than CLIENT, provided such source was not known to patientMoon to be prohibited from making such disclosure based on a fiduciary duty or confidentiality obligation to CLIENT, or (d) is independently developed by patientMoon without use of any Confidential Information or proprietary information or data supplied or made available to patientMoon by the CLIENT.

8. **Right to Advertise.**

- a. patientMoon may make known to any third party the existence of a relationship, past or present, with CLIENT as a client of patientMoon, including after termination of this Agreement and the completion of any Services.
- b. CLIENT grants patientMoon the license to use CLIENT’s marks, names, and logos in connection with advertising and marketing of patientMoon’s products and services. CLIENT may revoke this license with 30 days’ written notice to patientMoon. If not already terminated, such notice shall also constitute notice of termination of this Agreement.
- c. With the exception of the above rights, patientMoon shall maintain the confidentiality obligations set forth in these Terms or in any other agreement of non-disclosure or confidentiality.

9. **Duty of Non-Solicitation of patientMoon Employees, Consultants and Independent Contractors.**

CLIENT acknowledges and agrees that solely as a result of the services provided hereunder, and in light of the broad responsibilities of such services which include working with patientMoon employees, consultants and independent contractors, CLIENT has and will come into contact with and develop relationships with those persons. Accordingly, in addition to any terms and conditions regarding non-solicitation of employees set forth in any other agreement between patientMoon and CLIENT, CLIENT agrees that it will not, during the term of this Agreement and for a period of one (1) year after termination of this Agreement, for any reason, directly or indirectly, individually or on behalf of others, aid or endeavor to solicit or induce any employee, consultant or independent contractor of patientMoon to leave the employment or service of patientMoon, in order to accept employment of any kind with any other person, firm, partnership, or corporation. CLIENT acknowledges that in the event of a breach of this Section, patientMoon may suffer irreparable harm and will be entitled to injunctive relief as well as all

other remedies available at law or in equity.

10. **No Derogatory Statements.** Each party agrees not to make and/or publish in any manner, any derogatory or adverse statements, written or verbal, regarding the other party or its owners, directors, officers, employees, agents, affiliates, successors and/or assigns, except as permitted by law, to anyone including, but not limited to the other party's (or its successors and/or assigns) directors, officers, employees, agents, vendors, existing clients or potential clients.
11. **patientMoon Representations.** patientMoon represents and warrants to CLIENT that:
 - a. it has the full right, authority and power to enter into this Agreement, to carry out its obligations under these Terms, and to grant the rights granted herein to CLIENT.
 - b. it has the requisite skill, experience, and resources to perform the work described in these Terms; that the Services provided by patientMoon shall be performed in a professional and workmanlike manner exercising due skill and care; and all Services shall be provided consistent with applicable law.
12. **CLIENT Representations.** CLIENT represents and warrants to patientMoon that:
 - a. it has the full right, authority and power to enter into this Agreement and to carry out its obligations under these Terms.
 - b. all materials provided to patientMoon in connection with patientMoon's performance of the Services, including but not limited to, computer software, software source code, software design specifications, requirement documentation, visual design specifications, visual design elements, photographs, video, text, multimedia elements or other design, implementation or content elements, are wholly owned or duly licensed for use by CLIENT, and that the ownership or licensing of each of these resources and materials provides for their usage by patientMoon pursuant to completion of the Services.
13. **Ownership.**
 - a. CLIENT shall own all right, title, interest in, and all intellectual property related thereto, made in connection with or arising out of the performance of the Services provided to CLIENT pursuant to these Terms, including finalized versions of business or marketing plans, written content, website design and coding, advertising campaigns, social media posts, graphic design, and print design (collectively, "Deliverables"). patientMoon agrees to cooperate with CLIENT, and shall ensure through binding written obligations that the employees, agents, and independent contractors of patientMoon, its Affiliates and assigns, cooperate with CLIENT, in all steps necessary to transfer to CLIENT all right, title and interest in and to any intellectual property that pursuant to this Section 10 that CLIENT is entitled to own.
 - b. Notwithstanding the provisions of Section 10(a), title to and ownership of materials previously developed or copyrighted by patientMoon and not originated or developed under this Agreement ("Pre-Existing Materials") shall at all times remain the property of patientMoon and/or its licensors. If any Deliverable includes Pre-Existing Materials, patientMoon shall automatically grant to CLIENT a nonexclusive, perpetual, royalty-free, irrevocable, worldwide license to use, copy and distribute such Pre-Existing Materials as incorporated in the Deliverables. Such license shall only be granted upon completed payment by CLIENT.
 - c. CLIENT acknowledges that patientMoon possesses certain inventions, processes, know-how, trade secrets, computer technical expertise and software, Confidential Information and other

intellectual property, all of which have been independently developed without the benefit of any CLIENT Confidential Information or any other property of CLIENT under this Agreement and which is owned or controlled by patientMoon (collectively, "patientMoon Property"). CLIENT and patientMoon agree that any patientMoon Property or any improvements thereto which are used, improved, modified or further developed by patientMoon including directly modifying, enhancing or changing any patientMoon product that may be licensed to CLIENT shall be owned and shall remain the exclusive property of patientMoon, including product customizations. Any and all reports, plans, information, data, drawings, renditions, mock-ups, prototypes, computer software, customizations, enhancements or other works prepared by patientMoon in the creation of the Deliverables during the performance of this Agreement, which (i) are the product of patientMoon's technical expertise, (ii) are related to patientMoon's line of business or the way patientMoon performs its services, and (iii) do not use or include any CLIENT Confidential Information or any other property of CLIENT, shall be and remain the property of patientMoon.

14. **Indemnification.**

- a. Each party (the "Indemnifying Party") shall defend, indemnify, and hold harmless the other, including the other's directors, officers, employees, agents, subsidiaries and affiliates (collectively, the "Indemnified Party"), from and against any and all losses, liabilities, damages, judgments, awards, expenses, claims, actions, lawsuits and costs, including reasonable attorneys' fees and other expenses, that arise from or relate to claims or suits brought by a third party against an Indemnified Party to the extent directly or indirectly caused by the Indemnifying Party in its performance or its failure to perform hereunder and that cause or contribute to any actual or alleged (i) breach of any warranty, representation, or agreement made by the Indemnifying Party under this Agreement, and (ii) negligence or willful misconduct in performing or breaching its obligations hereunder.
- b. The Indemnified Party agrees to give the Indemnifying Party prompt written notice of any such claim, provided, however, that such notice shall not be a condition to the Indemnifying Party's indemnity obligations hereunder except to the extent the Indemnifying Party is materially and adversely affected by the Indemnified Party's failure or delay in providing such notice.
- c. The Indemnifying Party shall control the defense of such claim as long as the Indemnifying Party acts promptly and reasonably. Any settlement by the Indemnifying Party must be approved by the Indemnified Party, with such approval not to be unreasonably withheld, conditioned, or delayed if the Indemnified Party receives a complete release of any such claim. The Indemnified Party shall reasonably cooperate (at the Indemnifying Party's expense) with the Indemnifying Party in the defense of such claim.
- d. Notwithstanding anything to the contrary in these Terms, the Indemnified Party shall at all times have the right to fully participate in such defense at its own expense directly or through counsel.

15. **Limitation of Liability.** THE SERVICES AND THE WORK PRODUCT OF PATIENTMOON ARE SOLD "AS IS" AND ANY EXPRESS OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE DISCLAIMED. IN NO EVENT SHALL PATIENTMOON BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES (INCLUDING,

BUT NOT LIMITED TO, PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES; LOSS OF USE, DATA, OR PROFITS; OR BUSINESS INTERRUPTION) HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, WHETHER IN CONTRACT, STRICT LIABILITY, OR TORT (INCLUDING NEGLIGENCE OR OTHERWISE) ARISING IN ANY WAY OUT OF THE USE OF PATIENTMOON'S SERVICES, DELIVERABLES OR WORK PRODUCT, EVEN IF PATIENTMOON HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

16. Termination.

- a. If either party fails to comply in any material respect with any of the covenants, agreements, or conditions contained herein, the non-breaching party may, at its sole discretion and in addition to any other right or remedy available under applicable law or in equity and without penalty or additional liability, terminate this Agreement on five business days' written notice to the breaching party unless such breach is cured within such five business days.
- b. In addition, either party shall have the option to terminate this Agreement, for its convenience, without penalty or additional liability, on 30 days' prior written notice to the non-terminating party. In the event of any such termination, CLIENT shall remain obligated to pay patientMoon for hours worked and all services rendered prior to the effective date of such termination in accordance with the terms of this Agreement.
- c. Upon termination or expiration of this Agreement, each party shall return to the other all materials and other property of such other party held for purposes of performance of this Agreement.
- d. The rights and obligation of either party, which, by their nature, extend beyond the expiration or termination of this Agreement shall continue in full force and effect notwithstanding such expiration or termination, including, without limitation, Sections 3-15, 16(c), 16(d), 16(e) and 17-24.
- e. Upon termination of this Agreement by either party for any reason, any computer software which patientMoon has developed pursuant to this Agreement or any statement of work and which includes any patientMoon Property, as that term is defined in Section 10, shall remain the sole property of patientMoon. Following the effective date of any such termination ("Termination Date"):
 - i. CLIENT shall have no rights to any software, text, images, design elements, source code, drafts, documentation, design documents, databases or other patientMoon Property or any other materials for which rights are not explicitly granted in a statement of a work.
 - ii. The ownership provisions of Section 10 shall continue to apply.

17. Independent Contractor. Each party is an independent contractor and neither party is, nor shall be considered or deemed to be, an agent, distributor, or representative of the other and nothing herein shall create a partnership or joint venture. Neither party shall act or represent itself, directly or by implication, as an agent of the other or in any manner assume or create any obligation on behalf of, or in the name of, the other.

18. Force Majeure. Neither party shall be liable to the other for any delay or other non-performance resulting from circumstances or causes beyond its reasonable control, including, without limitation, fire or other casualty; act of God; war, terrorism or other violence; provided that such party has informed the other party of such force majeure event upon its occurrence and such

party uses best efforts and due diligence to effect the required performance as promptly as reasonably practicable.

19. **Separability.** If any term or provision of these Terms or any portion thereof is declared illegal or unenforceable by any court of competent jurisdiction, such provision or portion thereof shall be deemed modified so as to render it enforceable, and to the extent such provision or portion thereof cannot be rendered enforceable, these Terms shall be considered divisible as to such provision which shall become null and void, leaving the remainder of these Terms in full force and effect.
20. **Governing Law.** These Terms shall be governed by, construed and enforced in accordance with the laws of the Commonwealth of Massachusetts.
21. **Arbitration.** Any disputes arising out of this Agreement shall be submitted to binding arbitration before a mutually agreed-upon arbitrator pursuant to the rules of the American Arbitration Association in Boston, Massachusetts. The Arbitrator's award shall be final, and judgment may be entered in any court having jurisdiction thereof. CLIENT shall pay all arbitration and court cost, reasonable attorney's fees, and legal interest on any award of judgment in favor of patientMoon.
22. **Entire Agreement.** With regard to the subject matter of this Agreement, these Terms, as they may be amended from time to time as provided herein, (i) sets forth the entire agreement and understanding between the parties; (ii) merges all previous discussions and negotiations between the parties; and (iii) supersedes and replaces any other agreement that may have existed between the parties.
23. **Headings.** The section headings contained in these Terms are for reference purposes only and shall not affect the meaning or interpretation of these Terms.
24. **General Terms.**
 - a. No waiver of any right or remedy with respect to any occurrence or event on one occasion shall be deemed a waiver of such right or remedy with respect to such occurrence or event on any other occasion.
 - b. Any notice, required or permitted to be given hereunder, shall be in writing and shall be valid and sufficient if sent by nationally recognized overnight courier or dispatched by registered or certified mail, postage prepaid, in any post office in the United States addressed to either party at the relevant address listed above. Notice sent by overnight courier shall be deemed received on the next business day following placement with such carrier. Notice sent by any other permitted means shall be deemed received 3 days following placement with the carrier.