

Touch Surgery™ Terms of Use



- **What are these terms about?** We're Digital Surgery Limited, a Medtronic Limited Company, and these terms set out how you can use our Touch Surgery™ website (<https://www.touchsurgery.com>) and mobile app.
- **How can you use our services?** Our website and app contain surgical and medical videos, simulations, tools and content to help clinicians analyze their surgical technique. You can use these for your own informational and personal use and upload your own content for our other users.
- **Are there any restrictions?** Please don't use our services or submit any content for illegal, harmful or otherwise unauthorized purposes. No personally identifiable information belonging to you or any patient should be uploaded to our platform without written authorization. Check with your institution before uploading any content that contains personal data.
- **No guarantee.** Whilst we do our best, we can't guarantee that our services, content (or anything provided on our website or app by third parties) is accurate, will always be available or can be relied on, and we won't be responsible for any losses you might incur as a result.
- **No medical advice.** We do not provide medical review, assessment, advice, opinion, treatment, diagnosis or assessment of outcomes. You are solely responsible for your own clinical judgment and for your use of the website, mobile app, and any material obtained therefrom.
- **Want to get in touch?** Contact us at rs.dsusersupport@medtronic.com if you need anything!

SECTION A

1. About us and these Terms.

1. **Who we are.** We are Digital Surgery Limited, a Medtronic company registered in England under company number 07546735. You can find us at Fourth Floor, 226-236 City Road, London, United Kingdom, EC1V 2QY. Other Medtronic companies are our "**Affiliates**".
2. **What we do.** We operate the Touch Surgery™ website and mobile app, which are part of a software platform we provide for clinicians to upload, store and manage surgical and medical videos, and access tools and content to help them analyze and improve their procedures (through training, education and reflection) ("**Services**").
3. **How these Terms work.** These terms of use set out the terms on which we'll provide you with the Services ("**Terms**"). You will become legally bound by these Terms when you begin using the Services and become a "**User**".
4. **What terms apply to you.** This **Section A** sets out our general terms and applies to all Users, including Enterprise Users and Non-Enterprise Users.

Section B applies to "**Enterprise Users**" who are using the Services as part of an agreement we have with your organization (such as a commercial, research or collaborative partnership). You should also read any specific documents your institution provides you which apply to particular features of the Services, such as acceptable use policies, content standards, disclaimers and protocols.

Section C applies to "**Non-Enterprise Users**" who are using the Services and:

- we don't have an agreement with your institution;
 - the terms below aren't mentioned in the agreement we have with your institution; and/or
 - you're using the Services as our contractor; you're attending an event or training center run by us or a similar scenario.
5. **What else you should read.** These Terms incorporate additional, important documents which will apply to your use of the Services, and which may be updated from time to time. By using these Services, you also agree to our:
 - **EULA** (<https://www.touchsurgery.com/end-user-license-agreement>). This contains additional terms that apply when you download and use our app. You can also access these terms through the App Store and within the app itself.

- **Open-source notices** (<http://opensource.touchsurgery.com/>). This provides information on open-source software used within the Services and applicable licenses.

You also acknowledge that the following policies apply to your use of the Services:

- **Privacy Notice** (<https://www.touchsurgery.com/privacy>). This provides information on how we collect, use, and disclose personal data.
 - **Cookie Policy** (<https://www.touchsurgery.com/cookies>). This provides information on our use of cookies.
6. **Changes.** We may update these Terms at any time for any reason (such as for legal or regulatory reasons). We'll aim to inform you of any significant changes in advance via email or notifications within the Services, however by continuing to use the Services, you agree to the updated Terms. If you don't agree to the updated Terms, you should stop using the Services immediately.

2. Creating an account

1. **Accessing the Services.** We may provide the Services via a number of websites, platforms, apps, hardware devices and other online offerings (including the Touch Surgery™ website and mobile app).
2. **Content of the Services.** The Services may include access to video, audio, images, text (including message boards and blogs), widgets and other content ("**Content**"). Content may be created by us ("**Our Content**") or it may be uploaded or submitted by you or other Users ("**User Content**").
3. **Account registration.** Some of the Services are only available to registered Users. To use these Services, you must complete our online registration process by providing information about you ("**Registration Data**") and creating a password. Your Registration Data is considered part of your User Content.
4. **Your obligations.** You must:
 - be authorized to create an account and use the Services (whether acting for yourself or on behalf of an organization or other entity);
 - be over 18 years old;
 - keep your login details secure and avoid them being misused by any other person;
 - notify us immediately if you believe there has been any unauthorized access of your account; and
 - promptly update your Registration Data or any other information you provide to us to make sure it's accurate, up-to-date and complete.

5. **Our rights.** We may:

- refuse to register you or terminate or suspend your account (including any future access to the Services) at any time and for any reason. This includes if you breach these Terms or provide (or we suspect that) any information that is untrue, inaccurate, not current or incomplete; and
- confirm the accuracy of any Registration Data you provide through reasonable searches and enquiries (although we aren't required to do so).

3. **Using the Services**

1. **Your obligations.** You agree to use the Services in accordance with your institution's policies (where applicable). When using our Services, you must not:
 - do anything illegal or act in a way that would breach any professional code of conduct;
 - take, post, upload, publish or transmit any screenshots, screen captures, reproductions, drawings, photos, videos, downloads or data of any part of the Services unless we, your organization, or any other relevant Content owners have consented to this;
 - impersonate or misrepresent yourself or your organization;
 - access, tamper with or use non-public areas of the Services, our computer systems or of our providers;
 - attempt to probe, scan, or test the vulnerability of our systems or networks, breach or attempt to circumvent any security or authentication measures protecting the Services, or attempt to access another's User account without permission;
 - use, or attempt to use, the Services or download content by unauthorized means (such as scripts, bots, spiders, scrapers, crawlers, or data mining tools) unless we or other third-party web browsers have provided you with software to do so;
 - use the Services for any commercial purpose for the benefit of any third party or in a way which isn't permitted by these Terms;
 - attempt to (or actually) decipher, decompile, disassemble, reverse engineer or interfere with any of our software (unless allowed by law); or
 - encourage or assist any other person to do any of the above.

We may monitor and investigate your access or use of the Services, however we aren't required to do so. We may involve law enforcement authorities should you violate any of the above or other Terms.

2. **Accreditation and continuing learning.** Some of Our Content may be identified as "accredited" by an accrediting organization, which means that it may count towards fulfilling your continuing medical education, continuing professional development or other similar requirements. We may offer certificates to evidence your course completion, but it's ultimately your responsibility to maintain your own records of your development activities. If Our Content is accredited by an organization from time to time, we don't guarantee that any of Our Content will continue to be accredited.
3. **Data charges.** You understand that your use of the Services may involve transmitting significant amounts of data and that you are solely responsible for all data charges from your wireless carrier or internet service provider

4. Submitting content

1. **Interactive Areas.** The Services include (or may include in the future) online content hosting and storage services, discussion forums, or other interactive areas or services (altogether, "**Interactive Areas**") where you or third parties create, post or store Content. For some Interactive Areas, you will need to log in using either your account with us, or an account you have with a third party (such as Google, Apple or Doximity), who may have separate terms and conditions you'll need to agree to.
2. **User Content.** Users may submit videos and associated text, annotations and other content ("**User Content**") in some Interactive Areas. The type of User Content you can submit will depend on your subscription – please refer to Sections B and C for more information.
3. **Acceptable use.** You must not use our Services to post, upload, transmit, distribute, store, create or publish your User Content if it:
 - is unlawful, libelous, defamatory, obscene, pornographic, indecent, lewd, suggestive, harassing, threatening, invasive of privacy or publicity rights, abusive, inflammatory, fraudulent or otherwise objectionable or harmful. This includes any of your User Content containing nudity which we believe to be unacceptable to display publicly, however we understand that surgical videos may contain nudity by their nature;
 - would be considered, encourages or provides instructions for a criminal offence, violates the rights of us or others, endangers national security or that would otherwise create any liability or violate any local, state, national or international law;
 - may infringe the intellectual property of us or others;
 - impersonates any person or entity or otherwise misrepresents your affiliation with a person or entity; or we believe to be objectionable,

harmful or which restricts or inhibits any other person from using or enjoying the Interactive Areas or the Services, or which may expose us or Users to any type of harm.

4. **Your warranties.** You represent and warrant that:
 - you and your institution (if applicable) have all necessary rights and/or consents to submit your User Content including the right to grant us the license in Clause 5.2 below;
 - your User Content is accurate and not misleading; and
 - your User Content doesn't violate these Terms or another person or entity's rights or cause them injury.

5. Intellectual property

1. **Our IP.** We, our Affiliates and licensors own or control, and will continue to own or control, the Services, Content, and our logo and other trademarks ("**Our IP**"). Except as to your User Content, you must seek prior written approval before using any of Our IP in marketing materials. You must not remove any notices or credits posted on Our IP or any additional information they contain. All other trademarks, company names or logos mentioned in the Services are the property of their owners and cannot be used without their consent.
2. **Our license to your User Content.** Subject to our Privacy Notice and any separate agreements between us and your institution (if applicable), you grant us and our Affiliates a worldwide, unrestricted, unlimited, non-exclusive, royalty-free, irrevocable, perpetual, transferable, sub-licensable license to your User Content in the following ways:
 - to reproduce, modify, create derivative works of or otherwise use to create new and different works;
 - to reproduce, view, display, publish, print, copy, translate, perform, redistribute, modify, make, sell, transmit, distribute, transfer, stream, broadcast, create derivative works from or otherwise use in all types of media; and
 - to improve our and our Affiliates' products and services.
3. **Your license to use our IP.** Provided that you comply with these Terms, we grant you a limited, non-sublicensable, non-exclusive, revocable license under Our IP to access and make use of the Services and copy (except if prohibited without a license) or print portions of the Content for your informational, non-commercial and personal use only. No other implied license or right is granted to you under these Terms.

Any other use of Our IP not owned by you, or without our prior written consent, is strictly prohibited. If you use Our IP in an unauthorized way, your licence will terminate automatically and you may be in violation of applicable laws (such as copyright and trademark laws or communications regulations).

Depending on which Services you are accessing, Our IP may include open source software that is governed by separate license terms and is not subject to the use restrictions in these Terms. Please see the open source notices referenced above for more information.

4. **Your Feedback.** If you provide us with any comments or suggestions on how we can improve the Services ("**Feedback**"), we will own such Feedback and all intellectual property rights it contains as part of Our IP. When you provide Feedback, you warrant, agree and acknowledge that:
 - you've obtained all necessary consents, releases and licenses to submit this Feedback;
 - Feedback doesn't contain confidential or proprietary information;
 - we aren't required to keep Feedback confidential;
 - we may have submissions similar to your Feedback which are already in development;
 - we can, but aren't required to, review or monitor Feedback; and
 - we can remove any inaccurate, defamatory or misleading Feedback.

6. Disclaimers and notices

1. **Disclaimer.** We provide our Services, Content and other information on an "as is" basis, and make no representations, warranties or guarantees (express or implied) about the accuracy or completeness of the Services or Content, how up to date they are, their fitness for a particular purpose, or any particular outcome or result. We can't guarantee the uninterrupted access or availability of our Services or Content, or guarantee that it's free from errors, omissions, viruses or anything else which may have a harmful effect on any technology.
2. **Registration Data.** Whilst we do our best to prevent unauthorized access, we won't be responsible or liable for any harm relating to the theft or disclosure of your login details or Registration Data, or any other information you provide to us.
3. **User Content.** We may monitor, remove or edit User Content for any reason, at any time and without notice, however it's not controlled by us. We do not accept responsibility for the accuracy, veracity or the quality of any User Content. You acknowledge that your use of User Content is at your own risk.

4. **No confidentiality.** Except under our Privacy Policy and any separate agreements between us and your institution (if applicable), we don't guarantee anonymity or confidentiality for User Content, and strongly recommend that you think carefully about what you upload to Interactive Areas and the Services. You understand and agree that your User Content may be made public without any notice to or consent by you, and you should assume that any person (whether or not they are a User), may read your User Content.
5. **No reliance on Content.** Content is provided for educational, research, and reference purposes only, and hasn't been endorsed or approved by any governmental body or medical association or organization unless otherwise specified. Patients should not disregard or avoid professional medical advice because of any Content.

Our Content is not designed or meant to be used as:

- a replacement of real-life operative experiences of the procedures depicted;
- a medical/clinical emergency management system;
- a medical review or assessment of your User Content or surgical techniques;
- a recognized surgical training program; or
- advice from a qualified Health care professional on which you should rely.

The surgical procedures depicted in the Content must not be performed by anyone who isn't medically qualified, registered and regulated by relevant authorities in their territory of practice to perform medical or surgical procedures. Medical professionals are responsible for their own clinical and surgical decisions and should not rely on the Services or Content in making them.

6. **Third party contributions.** The Services and Content may include contributions from third parties such as medical device manufacturers, hospital trusts or other medical and research institutions, academic institutions or other commercial or research partners. We have no liability as to the accuracy, completeness or correctness of any contributions made by these third parties.
7. **Third party sites.** We may provide links to products, websites or other content from third parties ("**Third Party Sites**") for your convenience and to be used at your own risk. We don't control the content of Third Party Sites or endorse them, and they will be governed by their own terms and policies which you should read.
8. **Promotions.** We may run advertisements or promotions from third parties on our Services. Your participation in any promotions with third parties is solely between

you and that third party. We aren't responsible or liable for any loss you suffer connected with these promotions.

9. **Regulatory.** Notwithstanding our Privacy Notice, we might be required to share information from or about you with official bodies to fulfill our legal and regulatory obligations. We might also disclose such information (when necessary) in court proceedings. Examples include: UK government, law enforcement agencies like the police, regulatory bodies like the ICO.
10. **Use of AI.** Some aspects of the Services or Content may utilize machine learning or other artificial intelligence techniques.

7. Our liability to you

1. **General exclusions.** We, our Affiliates and licensors, and our or their directors, members employees or agents won't be liable to you or any third party for:
 - loss of profits, sales, business, or revenue;
 - business interruption;
 - loss of anticipated savings;
 - loss of business opportunity, contract, goodwill or reputation;
 - loss of data; and/or
 - indirect, special or consequential losses or damages.
2. **Additional exclusions.** In respect of the Services, Interactive Areas, Content or Third Party Sites, we, our Affiliates and licensors, also won't be liable for you for:
 - their unavailability;
 - your use of or reliance on them; and/or
 - any loss or damage you suffer connected with them.
3. **User Content.** You agree that we, our Affiliates and licensors, won't be responsible or liable for any third party claims, liabilities or other actions arising from any use of your User Content, such as:
 - defamation, trademark or copyright infringement;
 - violation of moral rights (including attribution rights or the right to object to derogatory treatment); and/or
 - violation of rights to privacy, publicity, personality or any similar matter.
4. **What's not excluded.** Our liability is not limited or excluded for death or personal injury caused by our negligence or fraud, or any other liability which can't be limited or excluded by law.
5. **Limitation of liability.** Our total aggregate liability for all claims arising out of these Terms shall not exceed the amounts paid by you to us during the 12 months' preceding the event which gave rise to the claim.

6. **Indemnification.** You agree to indemnify us, our Affiliates and our and their service providers, consultants, directors, officers, employees and agents, and applicable third parties (such as licensors, partners and advertisers whose products, services or content features in Our Content) for any losses or liabilities incurred from actual or alleged claims relating to:
 - your use of the Services or the Content;
 - your failure to perform your obligations under, or your violation of, these Terms;
 - any violation of applicable laws, rules or regulations by you or your personnel; and/or
 - your infringement of any third party's rights.

8. Other important terms

1. **Linking to our Services.** You can create a hyperlink to the Services for non-commercial purposes in a way that is fair, legal and doesn't damage our reputation. None of our logos, graphics, trademarks or any content contained in the Services can be used in hyperlinks without our prior written consent. We can withdraw this permission at any time for any reason.
2. **Export controls.** Our Services are subject to U.S. export controls restrictions, so we will not knowingly provide you with the Services if you are located in (or a resident or a national of) any country subject to a U.S. government embargo or trade sanction, or are on any of the U.S. government lists of restricted end users (such as the Specially Designated Nationals list). Please click [here](#) for more information on U.S. sanctions.
3. **Entire agreement.** Unless otherwise stated in an agreement between us and your institution, these Terms (including the incorporated documents referenced above) constitute the entire agreement between you and us and supersede any prior agreements or negotiations.
4. **No relationship.** Nothing in these Terms creates any relationship of agency, partnership, or employment between you and us. Neither you nor we are authorized to enter into any commitment on behalf of the other, except as expressly set out in these Terms.
5. **Rights of third parties.** No parties outside these Terms shall have any right to enforce any of its provisions unless otherwise stated.
6. **Assignment.** You may not assign or transfer your rights or obligations under these Terms without our prior written consent. We may assign or transfer our rights or obligations without restriction.

7. **No waiver.** No delay or failure by either party to exercise any right or remedy available to them under or in connection with these Terms shall prevent the future exercise of any such right or remedy.
8. **Invalidity.** If any provision of these Terms is or becomes illegal, invalid, or unenforceable, the legality, validity, and enforceability of the rest of these Terms shall remain unaffected.
9. **Applicable law.** These Terms shall be governed by the laws of England and Wales and the courts of England and Wales shall have exclusive jurisdiction to settle any disputes in relation to it unless otherwise agreed upon between us and your institution. However, we may bring claims in your territory of domicile and may seek equitable relief (including injunctive relief or specific performance) in any jurisdiction.

SECTION B

9. Additional Terms for Enterprise Users

1. **Submitting User Content.** Enterprise Users cannot submit "**User Content with Personal Data**", which is User Content that contains some Personal Data (such as patient information) or clearly depicts or identifies an individual, other than your own Personal Data, without separate written agreement. Please contact your institution to determine whether you may submit User Content with Personal Data.

"**Personal Data**" means information which can identify a living person, whether directly or indirectly if it's combined with other information. This includes an individual's name, identification number, location data or online identifier, pictures or images of the individual's face, or any other type of identifying information.

User Content with Personal Data will only be available to Users who are authorized by their institution to use and access it.

2. **Data privacy.** All User Content with Personal Data will be used in accordance with our Privacy Notice. Institutions will be the data controller and we will process it on their behalf in accordance with these Terms and any data processing agreement in place.

It's your and your institution's responsibility to make sure that your User Content with Personal Data is lawful and complies with all consents you've obtained.

3. **Indemnity.** If you share any User Content with Personal Data, you and your institution will be solely responsible and liable for use of that User Content with

Personal Data. We won't involve ourselves in any disputes between you, and you'll indemnify us for all losses or liabilities we incur connected to any dispute (including reasonable legal and professional fees). You will also indemnify us and our Affiliates if you breach this clause 9.3.

4. [Cancelling your account](#). If you wish to cancel your account and terminate these Terms, please contact your administrator at your institution or for further assistance please contact rs.dsservice@medtronic.com.

SECTION C

[10. Additional Terms for Non-Enterprise Users](#)

1. [Submitting User Content](#). Non-Enterprise Users can only submit "**Anonymized User Content**" to the Services, which are videos that don't include any Personal Data, other than certain metadata required for regulatory reasons (such as hospital name, clinician name, procedure type or date of upload). All Personal Data or any identifying information of a person depicted must be removed from your User Content before uploading it onto the Services. The only exception to this is if the Personal Data only relates to you and is comprised of commentary, workflows or other ancillary content in the Anonymized User Content. We may apply additional technical safeguards to make sure Personal Data, which may have been inadvertently or deliberately transferred by you without permission of your institution, has been removed or minimized.
2. [Your warranties](#). You represent and warrant that Anonymized User Content shall be free of any Personal Data, and that you've removed all identifying information of any persons depicted or referred to in the Anonymized User Content.
3. [Cancelling your account](#). You may cancel your account and terminate these Terms at any time by navigating to Profile > Privacy > Delete Account.