

## MyGut Mobile Terms of Use

**Last Updated: October 19 2020**

### Terms of Use

MyGut is a mobile application through which individuals suffering from Inflammatory Bowel Disease (IBD) who register to use the application (“Users”) may provide historical and ongoing information related to their (or with consent, another User’s) diagnosis, symptoms, treatment decisions, and daily activities (collectively, “User Data”) to Crohn’s and Colitis Canada (“CCC”). Users have access to their information in the application and may choose to give access to their health care provider. Users will also have access to educational information about IBD (collectively with User Data, “Content”). To register and use the application, you must agree to these Terms of Use. These Terms of Use constitute an agreement between you as a User (“you”) and CCC (“CCC”, “us”, “we”, “our”).

PLEASE READ THESE TERMS OF USE AND OUR PRIVACY POLICY CAREFULLY BECAUSE THEY WILL APPLY TO YOUR USE OF MYGUT AND CONTENT. BY USING MY GUT, YOU ARE INDICATING YOUR UNDERSTANDING OF AND AGREEMENT TO BE BOUND BY THESE TERMS OF USE AND HAVING YOUR PERSONAL INFORMATION (COLLECTIVELY WITH PERSONAL HEALTH INFORMATION “PI”) MANAGED IN ACCORDANCE WITH OUR PRIVACY POLICY, AND ACKNOWLEDGEMENT THAT YOU HAVE THE RIGHT, AUTHORITY AND LEGAL CAPACITY TO ENTER INTO THESE TERMS OF USE WITH RESPECT TO YOURSELF AND ANY MINOR USER ON WHOSE BEHALF YOU ARE LEGALLY AUTHORIZED TO ACT. IF YOU DO NOT AGREE TO BE BOUND BY THESE TERMS OF USE AND TO HAVE YOUR PI MANAGED IN ACCORDANCE WITH OUR PRIVACY POLICY, YOU MUST NOT USE MYGUT. YOU ALSO NEED TO BE OF THE AGE OF MAJORITY AND OTHERWISE CAPABLE OF ENTERING INTO A BINDING CONTRACT UNDER THE LAW APPLICABLE IN YOUR PROVINCE. IF YOU ARE AN INDIVIDUAL UNDER THE AGE OF MAJORITY IN THE JURISDICTION IN WHICH YOU LIVE (“MINOR”), YOU MAY ONLY USE MYGUT WITH YOUR PARENT OR GUARDIAN'S PERMISSION, IF YOU’RE PARENT OR GUARDIAN HAS READ AND ACCEPTED THESE TERMS OF USE ON YOUR BEHALF, AND HAS AGREED TO TAKE FULL RESPONSIBILITY FOR YOUR COMPLIANCE WITH THESE TERMS OF USE.

We may modify these Terms of Use at any time. The current version of these Terms of Use will be available each time you access MyGut. You agree to be bound by any changes to these Terms of Use when you continue to use MyGut after those changes are posted.

## **Privacy Policy**

The Privacy Policy is hereby incorporated into these Terms of Use by reference. Please read the Privacy Policy carefully for information regarding our collection, use and disclosure of any PI you provide to us, including your User Data.

## **Registration, Fees**

To access MyGut you are required to register for an account. To register, you require a valid email address and a password (collectively, “Credentials”. You will be asked to create or be given a password. You will need to input your Credentials every time you want to use MyGut. You will treat your Credentials as confidential information, which means that you will not disclose them to any other person or entity and will take reasonable steps to keep them from being discovered by others either intentionally or inadvertently. You understand and agree that your account and Credentials are personal to you and you agree not to provide any other person with access to MyGut or any part of MyGut using your Credentials. You agree to notify us immediately by email as indicated at the bottom of these Terms of Use of any unauthorized access to or use of your Credentials or any other breach of security involving your account. You are responsible for any misuse of or unauthorized access to MyGut or Content using your Credentials.

At present, there are no fees required to use MyGut. We will give you reasonable notice and the opportunity to close your account if we intend to introduce fees.

## **Intellectual Property, License to Use MyGut**

Except as otherwise provided in these Terms of Use, as between you and us, MyGut, including any and all Content, visual interfaces, information, design, computer code, software, trademarks, service marks, trade names, text, graphics, trademarks, logos, and other material provided through My Gut is our property. MyGut is protected by intellectual property rights under Canadian laws. You have no rights in or to MyGut or Content except your rights in regard to your User Data, and will not use MyGut or Content (except your User Data) except as provided or permitted under these Terms of Use.

Subject to the terms of these Terms of Use, we hereby grant you a limited, revocable, non-exclusive, non-transferable and non-sublicenseable right to use MyGut and Content for your own non-commercial and personal use and as permitted by the terms of use for the Apple App Store, Google Play App Store and/or other app store through which it is made available (“App Store”) as well as Microsoft Azure. For clarity, your use of MyGut is subject to the terms and conditions of the App Store from which you downloaded MyGut and Microsoft Azure. For details, refer to the terms of use of the App Stores, as applicable and Microsoft Azure.

For clarity, you are not permitted to transfer or assign the license granted to you to use MyGut and the Content to others. Your access MyGut will be suspended or terminated (as further described below) if you do not comply with the Terms of Use.

### **User Data**

You may choose to input the User Data of your Minor children, and adults over the age of majority in the jurisdiction in which they live with their explicit consent. By inputting or accessing the User Data of someone other than you, you are representing to CCC, and CCC is relying on your representation, that you have the consent of the individual to whom the User Data belongs or are otherwise legally authorized to collect, use and disclose that User Data.

You are responsible for the accuracy of all information that you input into MyGut, as well as obtaining consent from any individual whose information you choose to input into MyGut (except Minor children if you are authorized to make decisions regarding their PI without their consent). By inputting User Data, you agree and warrant that you have the necessary rights to do so including to disclose it to us. You understand and agree that you (and not us) are fully responsible and liable for any User Data you input into MyGut to us and any third party for the information and its accuracy. We are not responsible or liable to you or any third party for the content or accuracy of any User Data submitted by you (or any other User).

### **Acceptable Use**

In addition to the other restrictions outlined in these Terms of Use, you agree and warrant that you will not:

1. Input into MyGut any false, inaccurate or misleading information;
2. Access, use, or disclose someone else's User Data without consent (except where otherwise authorized in connection with your Minor child);
3. Reproduce or attempt to reproduce MyGut, or modify, create, translate or adapt any derivative works of MyGut or attempt to do any of the foregoing;
4. Use MyGut in violation of these Terms of Use and any laws, including without limitation, laws governing intellectual property, data protection and privacy, and import or export control;
5. Compromise the security of MyGut, which includes circumventing, removing, damaging, disabling or interfering with MyGut or any technology, features or measures in or of MyGut, or attempt to access areas or features of MyGut that you are not authorized to access (if any), including using or attempting to use another User's Credentials;
6. Use MyGut in any manner that could interfere with, disrupt, negatively affect or inhibit use of MyGut or other Users from fully enjoying MyGut, by any means, including uploading or otherwise disseminative viruses, worms or other malicious code;

7. Use any robot, spider, crawler, scraper or other automated means or interface to access MyGut, to extract data, or to bypass or access measures we may use to prevent or restrict access to MyGut;
8. Decompile, disassemble, reverse engineer or otherwise attempt to derive the source code of MyGut or bypass or circumvent measures employed to prevent or limit access to any area, content or code of MyGut;
9. Impersonate any person or entity or otherwise misrepresents your affiliation with a person or entity;
10. Engage in any harassing, intimidating, predatory or stalking conduct through the use of or in connection with your use of MyGut;
11. Remove or alter any trademark, logo, copyright or other proprietary notices, legends, labels in or on MyGut or used in connection with MyGut including on any Content;
12. Distribute, encumber, buy, sell, rent, lease, sublicense, transfer, publish, disclose or otherwise offer in exchange for any compensation, MyGut or access to your account or Credentials;
13. Develop any third party applications that interface with MyGut;
14. Use or otherwise encourage or promote the use of MyGut for any purpose that is illegal, unauthorized, beyond the scope of its intended use, or otherwise prohibited in these Terms of Use, including any content that is defamatory, obscene, pornographic, vulgar, offense, promotes discrimination, bigotry, racism, hatred, harassment or harm against any individual or group, is violent or threatening or promotes violence or actions that are threatening, or promotes illegal or harmful activities or substances; and
15. Give the impression that your use of MyGut is endorsed by us or another person or entity.
16. Use MyGut as the sole means of communication between you and any of your healthcare providers.

### **Termination and Suspension**

We reserve the right without liability, but are not obligated, to remove or disable access to MyGut or any User Data at any time and without notice, including but not limited to, if we, in our sole discretion, consider your use of MyGut or User Data to be objectionable or otherwise in violation of these Terms of Use. We have the right to investigate violations of these Terms of Use or conduct that affects MyGut, Content or Users.

In addition, we reserve the right to do any of the following at any time and for any reason, in our sole discretion, without prior notice or liability:

1. restrict, suspend or terminate these Terms of Use and your access to all or any part of MyGut
2. change, suspend or discontinue any or all part of MyGut;
3. remove or refuse to post on MyGut any User Data; and

4. Take appropriate legal action, including without limitation, referral to law enforcement, a regulatory or other governmental authority or harmed person or entity for any illegal or unauthorized use of MyGut.

## **Disclaimer**

MyGut AND CONTENT ARE PROVIDED “AS IS” AND “AS AVAILABLE”, WITHOUT ANY REPRESENTATION, WARRANTY, CONDITIONS OR GUARANTEES OF ANY KIND. TO THE MAXIMUM EXTENT PERMITTED BY LAW, WE AND OUR AFFILIATES, INCLUDING EACH OF THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, SERVICE PROVIDERS, LICENSORS, SUCCESSORS AND ASSIGNS (“CCC ENTITY”), DISCLAIM ALL REPRESENTATIONS, WARRANTIES, CONDITIONS OR GUARANTEES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT. THE CCC ENTITY DOES NOT WARRANT THAT MYGUT (INCLUDING CONTENT) WILL BE ACCURATE, SECURED, UNINTERRUPTED OR ERROR-FREE; THAT DEFECTS WILL BE CORRECTED; THAT MYGUT OR THE SERVER THAT MAKES MYGUT AND CONTENT AVAILABLE ARE FREE OF HARMFUL COMPONENTS OR THAT -MYGUT OR CONTENT WILL MEET YOUR REQUIREMENTS. YOU ARE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR EQUIPMENT OR DEVICE, LOSS OF USE OR LOSS OF DATA. FOR CLARITY, THE CCC ENTITY DOES NOT MAKE ANY GUARANTEE OF THE QUALITY, ACCURACY, OR REASONABLENESS OF ANY CONTENT INCLUDING WITHOUT LIMITATION USER DATA. THE FOREGOING DOES NOT AFFECT ANY WARRANTIES THAT CANNOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAW.

THE CCC ENTITY IS NOT RESPONSIBLE FOR ANY ERRORS OR OMISSIONS OR INJURY, LOSS, OR DAMAGE ARISING FROM OR RELATING TO THE USE (OR MISUSE) OF CONTENT OR INFORMATION IMPLIED BY CONTENT ON OR AVAILABLE THROUGH MYGUT OR IN ANY OF THE SOURCE DOCUMENTATION.

CONTENT, OTHER THAN USER DATA, IS PROVIDED FOR GENERAL INFORMATION PURPOSES ONLY. IT IS NOT ADVICE ON WHICH YOU CAN RELY. YOU MUST OBTAIN PROFESSIONAL ADVICE BEFORE TAKING OR REFRAINING FROM TAKING ANY ACTION ON THE BASIS OF CONTENT AS IT MAY NOT APPLY TO YOU OR MAY BE MISSING MATERIAL INFORMATION.

FROM TIME TO TIME, WE MAY PERFORM MAINTENANCE ON MYGUT. DURING THIS TIME, ACCESS TO MYGUT, PARTICULAR FEATURES, OR CONTENT INCLUDING USER DATA MAY BE UNAVAILABLE OR LIMITED.

## **Limitation of Liability and Indemnity**

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE CCC ENTITY, SHALL NOT BE LIABLE FOR ANY DAMAGES OF ANY KIND INCLUDING, WITHOUT LIMITATION, ANY DIRECT, SPECIAL, INDIRECT, PUNITIVE, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES OR FOR

ANY LOSS OR DAMAGES IN THE NATURE OF OR RELATING TO LOST BUSINESS, LOST SAVINGS, LOST DATA AND/OR LOST PROFITS ARISING FROM YOUR USE OF, RELIANCE UPON, OR INABILITY TO USE MYGUT, REGARDLESS OF THE CAUSE AND WHETHER ARISING IN CONTRACT (INCLUDING FUNDAMENTAL BREACH), TORT (INCLUDING NEGLIGENCE), OR OTHERWISE. THIS SHALL APPLY EVEN IF WE KNEW OF OR OUGHT TO HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.

YOU ASSUME TOTAL RESPONSIBILITY FOR YOUR USE OF MYGUT AND CONTENT. YOUR ONLY REMEDY AGAINST US FOR DISSATISFACTION WITH MYGUT IS TO STOP USING MYGUT.

IF, NOTWITHSTANDING THESE TERMS OF USE, WE ARE FOUND LIABLE TO YOU FOR ANY DAMAGE OR LOSS WHICH ARISE OUT OF OR IS IN ANY WAY CONNECTED WITH YOUR USE OF MYGUT, OUR LIABILITY SHALL IN NO EVENT EXCEED \$1.00 CAD.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, YOU AGREE TO DEFEND, INDEMNIFY AND HOLD THE CCC ENTITY HARMLESS FROM AND AGAINST ANY LIABILITY, CLAIMS, LOSSES, JUDGMENTS, DAMAGES, COSTS, FEES AND EXPENSES (INCLUDING WITHOUT LIMITATION, REASONABLE LEGAL FEES) CAUSED BY OR RESULTING FROM YOUR USE OF MYGUT OR CONTENT INCLUDING WITHOUT LIMITATION USER DATA, OR BREACH OF THESE TERMS OF USE. FOR CLARITY, YOU WILL ALSO DEFEND, INDEMNIFY AND HOLD THE CCC ENTITY HARMLESS FROM AND AGAINST ANY CLAIMS BROUGHT BY THIRD PARTIES ARISING OUT OF YOUR USE OF MYGUT AND CONTENT INCLUDING WITHOUT LIMITATION USER DATA. WE RESERVE THE RIGHT, AT YOUR EXPENSE, TO ASSUME THE EXCLUSIVE DEFENSE AND CONTROL OF ANY MATTER THAT IS SUBJECT TO INDEMNIFICATION UNDER THIS SECTION, AND YOU AGREE TO COOPERATE WITH OUR DEFENSE OF SUCH MATTER.

### **Applicable Law and Forum**

The provision and use of MyGut and these Terms of Use will be governed by and construed in accordance with the laws of Ontario and the federal laws of Canada applicable therein, without giving effect to any choice or conflict of law provision, and notwithstanding your residence, domicile or physical location. Any action or proceeding arising out of or relating to MyGut and under these Terms of Use will be instituted in the courts of the province of Ontario and/or the Federal Court of Canada and each party irrevocably submits to the exclusive jurisdiction of such courts in any such action or proceeding. You waive any and all objections to the exercise of jurisdiction over you by such courts and to the venue of such courts.

### **Miscellaneous**

These Terms of Use (including the Privacy Policy) constitute the entire agreement between you and us concerning the subject matter hereof and supersede all prior oral or written understandings. The parties have expressly required that these Terms of Use and all related documents, either present or future, be drawn up in the English language only. *Les parties déclarent qu'elles exigent que cette entente et tous les documents y afférents, pour le présent ou*

*l'avenir, soient rédigés en langue anglaise seulement.* If any provision of these Terms of Use shall be deemed unlawful, void or for any reason unenforceable, then that provision shall be deemed severable from these Terms of Use and shall not affect the validity and enforceability of any remaining provisions. No waiver under these Terms of Use is effective unless it is in writing and signed by an authorized representative of the party waiving its right. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from these Terms of Use operates or may be construed as a waiver thereof.

## **Contact**

All communications, questions or concerns relating to MyGut should be directed to: [mygut@crohnsandcolitis.ca](mailto:mygut@crohnsandcolitis.ca) or to:

Crohn's and Colitis Canada

600-60 St. Clair Avenue East

Toronto, ON M4T 1N5