

The Winnipeg Foundation Website Terms of Use Agreement

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1. The Foundation

The Foundation is a community foundation that offers flexible options for donors to help them achieve their philanthropic goals. Gifts to The Foundation are pooled and invested, and the income earned is distributed as grants according to The Foundation’s spending policy, in support of local community projects primarily in Winnipeg, Manitoba.

2. Acceptance of Terms

This Agreement governs the access to and the use of the Websites and constitutes an agreement between The Foundation (referred to as the “The Foundation”, “we”, “us” or “our”) and users of the Websites, such as you. Each time you use the Websites, you signify your acceptance and agreement, and the acceptance and agreement of any party you purport to represent, without limitation or qualification, to be bound by this Agreement and The Foundation’s Privacy Policy available at <http://www.wpgfdn.org/privacypolicy>, as they may be amended from time to time. By using the Websites, you also represent and warrant that you have the legal authority to agree to and accept this Agreement on behalf of yourself and any party you purport to represent. If you do not agree with all of the terms and conditions of this Agreement, or you are not authorized to agree to and accept this Agreement, you may not use the Websites.

The Foundation reserves the right to modify or replace this Agreement or the Privacy Policy at any time by posting the updated Agreement or Privacy Policy to its Websites. It is your responsibility to check the Websites periodically for such updates. Continued use of any of the Websites after the posting of changes to the Agreement or Privacy Policy constitutes your acceptance of the changes.

3. Intellectual Property Rights

Subject to paragraph 3(a) below, all Foundation Content (as defined below) contained on the Websites is the proprietary property of The Foundation, its content suppliers or its licensors, as the case may be, and is protected by Canadian and international copyright, trademark, and other applicable laws. For the purposes of this Agreement, “Content” includes any and all material, information in text, graphical, video and audio forms, images, reports, articles, publications, data, databases, charts, graphics, photographs, illustrations, maps, interfaces, applications, designs, music, sound and other files, web pages, files, software, product names, company names, trademarks, logos and trade names contained on the Websites together with all intellectual property rights therein. “Foundation Content” means all Content contained on the Websites, other than User Content (as defined below), as well as the manner in which the Content is presented or appears on the Websites, and all intellectual property rights therein. “User Content” means all Content that is submitted, transmitted, provided, posted or otherwise made available by users to the Websites.

Except for the rights you may have in the User Content posted, submitted, transmitted, provided or otherwise made available by you on the Websites, you do not acquire ownership rights or any implied right to any Content obtained, accessed, used or viewed through the Websites, and the posting, submission, transmission, provision or otherwise making available of information or materials on the Websites does not constitute a waiver of any rights in such information, materials and/or Content.

(a) User Content Licence

When you submit your original copyrightable User Content to the Websites, you retain ownership of any copyright you claim to your submitted User Content. Note that certain copyright laws and other applicable laws create fair dealing or fair use exceptions for the purpose of news reporting to what would otherwise be copyright infringement. By making your User Content available through the Websites, you automatically grant to The Foundation a royalty-free, perpetual, irrevocable (except as expressly set forth in this Agreement), non-exclusive, transferable, worldwide, sublicensable (through multiple tiers) right and licence to use, reproduce, copy, distribute, transmit, host, market, create derivative works of, modify, adapt, display and perform the User Content and any intellectual property rights therein (including but not limited to any copyright, trademark, publicity and database rights), in any form, technology or media now known or later developed, without providing compensation to you or anyone else, without any liability whatsoever, and free from any obligation of confidence or other duties on the part of Foundation. The Foundation can grant sublicences with respect to the User Content.

Subject to The Foundation’s Privacy Policy where relevant, you hereby (i) agree to waive all moral rights in any User Content and any intellectual property rights therein in favour of The Foundation; (ii) consent to your name appearing as the author or contributor of any such User Content, where applicable, and to the disclosure and/or display of such information and any other information which appears in or is associated with such User Content; (iii) acknowledge and agree that The Foundation is not responsible for any loss, damage, or corruption that may occur to your User Content; and (iv) acknowledge and agree that any User Content you provide for display on the Websites will be considered non-confidential.

When you submit User Content to the Websites, you (i) represent and warrant that the User Content is original to you and that no other party has any rights thereto, and that you retain ownership of any copyright you claim to your submitted User Content, or (ii) you represent and warrant that you are legally entitled to post, submit, transmit, provide or otherwise make available the User Content and grant the foregoing licence to The Foundation.

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4. Trademark Information

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5. Rules of Conduct

The Websites provide or may provide features that allow you to post, submit, transmit, provide or upload User Content, or to interact with other users through forums, board services, blogs, or chat areas. When using any features of the Websites, it is a condition of your use of the Websites and any of their features that you agree to the following:

- You are required to select a user identification (“UserName”) and password to access and use certain features of the Websites. You are responsible for maintaining the confidentiality of your UserName and password.
- You are responsible for all activity that occurs under your UserName.
- You are solely responsible for your conduct and any User Content, materials or information that you submit, provide, transmit, post, or display on the Websites, or that you allow others to submit, provide, transmit, post, or display on the Websites under your UserName.
- You will not upload, post, email, submit, provide, transmit or otherwise make available any User Content, materials or information to, on or through the Websites that are fraudulent, unlawful, harmful, offensive, illegal, threatening, abusive, harassing, tortious, defamatory, obscene, libelous, pornographic, invasive of another’s privacy, or hateful.
- You will not post, provide, submit, transmit or otherwise make available User Content, materials or information that infringe a patent, trademark, trade secret, copyright or other proprietary rights of another person or entity or that violate any right of privacy, or that defame or libel any person or entity, or offer content that you do not have a right to make available under any law or under contractual or fiduciary relationships.
- You will not transmit any worms or viruses, spyware, malware or any other harmful or destructive code to or through the Websites.
- You will not upload, post, email, transmit, provide, submit or otherwise make available to users of the Websites any unsolicited or unauthorized advertising, promotional materials, “junk mail,” “spam,” “chain letters,” “pyramid schemes,” “affiliate links,” or any other form of solicitation.
- You will not use the Websites for any illegal or unauthorized purpose or violate any applicable provincial, state, federal or local laws in your jurisdiction.
- You will not “stalk” or otherwise harass anyone on or through the Websites.
- You will not pretend that you are, or that you represent, someone else, or impersonate any other individual or entity, or falsely state or otherwise misrepresent your affiliation with an individual or entity.
- You will not access or use another user’s account without that user’s permission, nor will you compromise another user’s account. You agree that if such acts are brought to the attention of The Foundation, The Foundation may (1) immediately terminate your Foundation account, if any, and (2) provide all relevant information to law enforcement officials in order to assist in an investigation of your actions.

- You will not transmit User Content that includes personal or identifying information about another person without that person’s explicit consent.
- You will not violate nor attempt to violate the security of the Websites, including, without limitation:
 - o accessing or using data not intended for you, including logging into a server or account which you not authorized to access or use;
 - o attempting to probe, scan or test the vulnerability of a system or network to breach security or authentication measures without proper authorization;
 - o using any “deep-link”, “page-scrape”, “robot”, “spider” or other automatic device, program, algorithm or methodology, or any similar or equivalent manual process, to access, acquire, copy or monitor any portion of the Websites or any content, or in any way reproduce or circumvent the navigational structure or presentation of the Websites or any content, to obtain or attempt to obtain any materials, documents or information through any means not purposely made available through the Websites;
 - o taking any action that imposes an unreasonable or disproportionately large load on the infrastructure of the Websites or The Foundation’s systems or networks, or any systems or networks connected to the Websites or to The Foundation’s systems;
 - o conducting a reverse look-up, tracing or seeking to trace any information on any other user to its source, or exploit the Websites or any information made available or offered by or through the Websites, in any way where the purpose is to reveal any information, including but not limited to personal identification or information, other than your own information, as provided for by the Websites;
 - o attempting to interfere with, disrupt or disable service to any user, host or network, including, without limitation, via means of “denial of service” attacks, overloading, “flooding”, “mail-bombing” or “crashing”;
 - o disrupting network nodes or network services or otherwise restricting, inhibiting, disrupting or impeding The Foundation’s ability to monitor or make available the Websites; or
 - o taking any action in order to obtain services to which you are not entitled.

The Foundation may review User Content before it is posted, displayed or transmitted and may refuse to post, display or transmit any User Content to the Websites. The Foundation reserves the right, in its sole discretion, to edit or remove, refuse to accept, post, display or transmit any User Content. You acknowledge and agree that The Foundation may, in its sole discretion, monitor or have monitored its Websites, including

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6. Registration

You may view Content without registering an account with The Foundation; however, to access and use some features of the Websites you will be required to select a Username and password. In consideration of your use of such features, you agree to: (a) provide true, accurate, current and complete information about yourself as prompted by any registration form(s) on the Websites, including your geographical location and address (the "Registration Data"); and (b) maintain and promptly update the Registration Data to keep it true, accurate, current and complete. If you provide any information that is untrue, inaccurate, not current or incomplete, The Foundation has the right to suspend or terminate your account and refuse any and all current or future use of the Websites (or any portion thereof).

You will receive a password and account designation upon completing the registration process. You are responsible for maintaining the confidentiality of the password and account and are fully responsible for all activities that occur under your password or account. You agree to: (a) immediately notify The Foundation of any unauthorized use of your password or account or any other breach of security; and (b) take measures to prevent unauthorized access or use (e.g., ensuring that you exit from your account at the end of each session).

Any personal information you provide in the registration form will be collected in accordance with, and for the express purposes set out in, The Foundation's Privacy Policy.

The Foundation reserves the right to change, suspend, or discontinue the Websites (including, but not limited to, the availability of any feature, database, or Content) at any time for any reason. The Foundation may also impose limits on certain features and services or restrict your access and use to parts or all of the Websites without notice or liability.

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While the Websites may contain links to external third-party websites, The Foundation is not responsible for

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8. Disclaimer

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It is not The Foundation's intention to provide specific advice about philanthropy or charitable giving to users of the Websites, but rather to provide users with information to help them better understand their options. The Foundation urges users to consult with The Foundation's Donor Services Staff and/or their own professional advisors for answers to their charitable giving questions.

9. Limitation of Liability

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THIS EXCLUSION OR LIMITATION OF LIABILITY APPLIES REGARDLESS OF THE FORM OF ACTION OR PROCEEDING, WHETHER IN CONTRACT, TORT, STRICT LIABILITY, BREACH OF STATUTORY DUTY OR OTHERWISE.

YOU HAVE THE SOLE RESPONSIBILITY FOR ANY DECISIONS YOU MAKE BASED ON INFORMATION CONTAINED IN THE WEBSITES.

IF YOU USE THE WEBSITES, YOU ARE AGREEING THAT THIS LIMITATION OF LIABILITY IS REASONABLE AND IN KEEPING WITH THE NATURE OF THE WEBSITES.

If you are dissatisfied with the Websites or with this Agreement, you agree that your sole and exclusive remedy is to discontinue using the Websites.

10. No Warranty

YOU AGREE THAT THE WEBSITES ARE PROVIDED ON AN “AS IS” BASIS, AND THAT YOUR USE OF THE WEBSITES PROVIDED BY THE FOUNDATION SHALL BE AT YOUR SOLE RISK. TO THE FULLEST EXTENT PERMITTED BY LAW, THE FOUNDATION DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, IN CONNECTION WITH THE WEBSITES AND YOUR ACCESS TO AND USE THEREOF, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, SECURITY, ACCURACY OR ANY IMPLIED WARRANTY ARISING FROM COURSE OF DEALING OR USAGE OF TRADE. THE FOUNDATION MAKES NO WARRANTIES OR REPRESENTATIONS ABOUT THE CREDIBILITY OF THE USERS OF THE WEBSITES, OR ABOUT THE TRUTHFULNESS, ACCURACY OR COMPLETENESS OF THE USER CONTENT, THE CONTENT AND/OR THE FOUNDATION CONTENT ON THE WEBSITES OR THE CONTENT OF ANY WEBSITES LINKED TO THE WEBSITES, OR THE AVAILABILITY, QUALITY, CHARACTERISTICS, LEGITIMACY, FUNCTIONALITY, SECURITY OR SAFETY OF ANY USER CONTENT, CONTENT AND/OR FOUNDATION CONTENT POSTED, DISPLAYED, SUBMITTED OR TRANSMITTED ON THE WEBSITES, OR ANY DESCRIPTIONS OR LITERATURE ABOUT THE USER CONTENT, THE CONTENT AND/OR THE FOUNDATION CONTENT. THE FOUNDATION ALSO MAKES NO REPRESENTATIONS OR WARRANTIES THAT THE USER CONTENT, THE CONTENT AND/OR THE FOUNDATION CONTENT ON THE WEBSITES IS FIT FOR ANY PARTICULAR PURPOSE OR WILL MEET ANY USER’S REQUIREMENTS, AND ASSUMES NO LIABILITY OR RESPONSIBILITY FOR ANY (I) ERRORS, MISTAKES, OR INACCURACIES OF THE USER CONTENT, THE CONTENT AND/OR THE FOUNDATION CONTENT; (II) PERSONAL INJURY OR PROPERTY DAMAGE, OF ANY NATURE WHATSOEVER, RESULTING FROM YOUR ACCESS TO AND USE OF THE WEBSITES; (III) ANY UNAUTHORIZED ACCESS TO OR USE OF OUR SECURE SERVERS AND/OR ANY AND ALL PERSONAL INFORMATION AND/OR FINANCIAL INFORMATION STORED THEREIN; (IV) ANY INTERRUPTION OR CESSATION OF TRANSMISSION TO OR FROM THE WEBSITES, (V) ANY BUGS, VIRUSES, TROJAN HORSES, OR THE LIKE, WHICH MAY BE TRANSMITTED TO OR THROUGH THE WEBSITES BY ANY THIRD PARTY, AND/OR (VI) ANY ERRORS OR OMISSIONS IN ANY USER CONTENT, CONTENT AND/OR FOUNDATION CONTENT, OR FOR ANY LOSS OR DAMAGE OF ANY KIND INCURRED AS A RESULT OF THE USE OF ANY USER CONTENT, CONTENT AND/OR FOUNDATION CONTENT POSTED, EMAILED, SUBMITTED, DISPLAYED, TRANSMITTED, OR OTHERWISE MADE AVAILABLE VIA THE WEBSITES.

11. Indemnity

By accepting this Agreement, you agree to indemnify and hold The Foundation harmless from any and all claims, demands, liabilities, expenses or tax assessments, including reasonable legal fees, arising out of any claim made by any third party or any action taken by any governmental or regulatory body, due to, arising out of or relating to (i) any User Content that you submit, post, transmit, provide or otherwise make available through the Websites, (ii) your use of the Websites, (iii) your connection to the Websites, (iv) your actual or

alleged breach of this Agreement, (v) your actual or alleged infringement of any third party intellectual property or proprietary rights, or (vi) your actual or alleged violation of any applicable laws, rules, regulations or rights of another.

12. Linking and Framing

While The Foundation welcomes links to its Websites, your website cannot state or imply that The Foundation endorses or supports an organization, agency or program without The Foundation's permission. The Foundation reserves the right to summarily cancel and revoke at any time and without notice any permission it may give to link to the Websites.

The framing of the Websites or any of the Content in any form and by any method is strictly prohibited.

13. Miscellaneous Provisions.

- (a) **Entire Agreement.** This Agreement, including any changes made to this Agreement from time to time, constitutes the entire agreement between you and The Foundation pertaining to the subject matter hereof. You agree to review this Agreement prior to any use of the Websites, and each use of the Websites by you shall constitute and be deemed your unconditional acceptance of this Agreement. The Foundation may prospectively modify this Agreement by posting a revised Agreement on the Websites.
- (b) **No Agency.** No agency, partnership, joint venture or employee-employer relationship is intended or created by this Agreement.
- (c) **Governing Law and Forum.** The Foundation controls <http://www.wpgfdn.org/>, endowmanitoba.ca, wpgfdnyip.org and cncwpg.org from its offices within the Province of Manitoba, Canada. By accessing and using the Websites, you agree that all matters relating to access to, or use of, the Websites, or any other hyperlinked website, shall be governed by the laws of the Province of Manitoba and the federal laws of Canada applicable therein. You also agree and hereby submit to the non-exclusive personal jurisdiction and venue of the courts of the Province of Manitoba and acknowledge that you do so voluntarily and are responsible for complying with all local laws.
- (d) **Waiver and Severability.** The failure of The Foundation to exercise or enforce any right or provision of this Agreement shall not constitute a waiver of such right or provision. In the event that any provision of this Agreement is held by a Court or a tribunal of competent jurisdiction to be unenforceable, such provision will be enforced to the maximum extent permissible and the remaining portion of this Agreement will remain in full force and effect.
- (e) **General.** You agree to waive any right you may have to: (i) a trial by jury; and (ii) commence or participate in any class action against The Foundation related to the Websites, the Content, the User Content, The Foundation Content and/or this Agreement, and where applicable, you also agree to opt out of any class proceedings against The Foundation or its licensors.

- (f) **Notices.** The Foundation may provide you with notices, including without limitation, those regarding changes to this Agreement, The Foundation’s Privacy Policy, and other service-related announcements, by email or postings on the Websites.
- (g) **Assignment.** The Foundation may assign this Agreement to any successor of The Foundation. This Agreement cannot be assigned or transferred, in whole or in part, by you. This Agreement will enure to the benefit of and be binding upon each of us and our respective heirs, administrators, successors and permitted assigns.
- (h) **Headings.** All article or section headings are for reference and convenience only and shall not be considered in the interpretation of this Agreement.
- (i) **E-mail.** The inclusion of any email addresses on the Websites is not consent to receiving unsolicited commercial electronic messages or SPAM.

14. Termination

The Foundation reserves the right to suspend or terminate, or take any other action or remedy that we deem reasonable, appropriate or necessary, in our sole discretion, with respect to your account immediately, without prior notice or liability, for any reason. If we terminate your account, your right to use the Websites will immediately cease. All provisions of this Agreement will survive termination, including without limitation, intellectual property ownership provisions, licenses, warranty disclaimers, indemnities, and limitations of liability. The Foundation reserves the right to modify or terminate the Websites for any reason, without notice, at any time.

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