



WHITE PAPER

# TERMS OF USE: TRANSPARENCY OR TERROR?

# Terms of Use – Transparency or Terror?

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Data privacy and consent is a hot topic – and it becomes more important every year.

Organizations are delivering more services online, and collecting more end user data to do so. How this data is collected, managed, utilized, and communicated to end users has become a major source of risk that many organizations attempt to sweep away with an outdated and generic approach to building their Terms of Use.

This whitepaper will explore the topic of Terms of Use – and the broader topic of data privacy and consent – and present a modern approach that better fits the reality of today and tomorrow’s digital landscapes and requirements.

To do so, this whitepaper will explore:

- Why organizations need the right approach to Terms of Use more than ever
- How Terms of Use are typically approached, and what’s wrong with it
- What a better approach to consent looks like, and how Portage delivers it



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## Why We Need Terms of Use in the First Place

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Digital services and ecosystems need to collect a certain amount of data to deliver their value. At the same time, the organizations behind these digital services and ecosystems typically need to communicate to end users what data they are collecting, and how they will use that data to provide access to the requested services and ecosystems, and also how they might share that data with other organizations.

For many organizations, communicating this usage and receiving the users’ consent to do so is mandatory. Private sector organizations are typically subject to data privacy laws that require they do so. Some public sector organizations are similarly required to communicate data usage and to acquire their users’ consent, but not all, as some public sector organizations are legally entitled to do so without notice.

Yet, regardless of whether an organization is legally obligated to do so, the process of communicating data usage to users and acquiring their consent is rapidly becoming the norm for all digital services and ecosystems.

While it is impossible to predict the exact provisions of future data privacy regulations and to whom they will apply, it is safe to say that – whether through new regulation or changing user expectations – data privacy and consent will become an assumed best practice for all organizations.

At present, and likely even more so in the future, the failure to fully communicate data privacy terms to users, and failure to acquire truly informed consent from those users, creates significant risk for organizations. They stand to lose the trust and loyalty of their users, to fall out of compliance with regulatory frameworks, and to face whatever fines or loss of business that might come from either outcome.

While many organizations are increasingly concerned about creating transparency and informed consent with the users of their digital services and ecosystems, many of them still follow general approaches to communication and collecting terms of use that are increasingly outdated and inadequate.



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## The General (Obsolete) Approach to Collecting Terms of Use

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Many organizations continue to draft and present their users with a large and generic listing of their Terms of Use. This document is typically written in obscure legalese that most end users generally cannot understand, and will never even attempt to digest.

Organizations present these impenetrable Terms of Use for a few reasons:

- They may not want to bother with thinking through and drafting a Terms of Use that accurately reflects their own approach to data privacy. Instead, they just use a more-or-less boilerplate legal document that they feels covers their uses.
- They don't want to interrupt the flow of end user experience, so they present the same general Terms of Use that their end users are accustomed to seeing and clicking through on other platforms.
- They may have dozens of different applications, services, and partners in their ecosystem each with its own data collection and usage needs. As such, they think it will be simpler and less obtrusive to acquire user permission to collect everything and use whatever they might need, whenever they might need it.
- They might worry that if end users understood all of the sensitive data they were giving up, and all of the ways that data might be used, that users may not give their consent to it. Thus, they do not explain to users the full implications of their policy in easy-to-understand language that could be rejected.

Now, not every organization continues to follow this outdated model. We are seeing, for instance, more websites present their users with configuration preferences for browser cookies, or other privacy preferences that they can customize to their comfort level.

While this indicates that we might be seeing the world of Terms of Use changing, it is doing so slowly, and with adjustments that might be considered half measures, and still carry many of the problems inherent in outdated approaches to communicating data usage and collecting consent from end users.

# What's Wrong With These Standard (and Modified) Approaches

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Organizations do not always understand what's wrong with following this standard – or slightly modified – approach to Terms of Use. After all, this approach complies with existing regulations, it (technically) communicates data usage, and it gives users the opportunity to become informed on that usage before they consent to it.

In addition, most organizations do not have malicious intent when they follow this standard approach. They are simply trying to check a box in the design and development of their digital services and ecosystems. But regardless of intent or ethics, organizations would be wise to change their approach to Terms of Use because these standard approaches create a large amount of risk.

Specifically, the standard approach to Terms of Use:

- **Is not transparent, and does not collect truly informed consent.** As such, end users may lose trust and loyalty if they learn how their data is really being collected and used, and that an organization may have tried to obscure this fact.
- **Encourages a passive response from end users.** Standard Terms of Use are so impenetrable for the average end user that it prevents them from understanding what they are agreeing to or its potential consequences, and keeps them from taking an active interest in managing their data and consent.
- **Does not give notice if more data is being collected, used, and shared.** This can further erode end user trust. Even if the organization sends an updated Terms of Use and acquires another click of consent, if the new document is still impossible to understand, then the same problems linger.
- **Creates a lot of cybersecurity risk.** It often leads organizations to collect, store, use, and transmit far more data than they actually need. This creates an unneeded “honeypot” for bad actors to target that does not need to exist at all.
- **Is bad practice and misaligned with emerging standards.** Even if it complies with existing data privacy frameworks, it is not “future proof” and does not align with the direction that privacy and consent standards are being written. Eventually, organizations will need to change their approach no matter what.



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Many organizations never think through these sources of risk created by following the standard approach to Terms of Use, and do not realize they are accruing them. Thankfully, organizations can mitigate these risks by taking a different approach to collecting and managing the consent of their digital end users.

# A Better Approach to Collecting and Managing Consent

It can be daunting to fully rethink how Terms of Use should be drafted, communicated, collected, and managed. However, there is some good news – organizations do not need to undertake this project on their own.

There are multiple new frameworks being developed and published that offer an updated approach to Terms of Use, and to otherwise handling privacy and consent around the data collected and utilized within digital services and ecosystems. Organizations simply need to comply with these new forward-looking frameworks.

One such framework is the Pan Canadian Trust Framework (PCTF). [The PCTF](#) establishes processes and technical standards that preserve privacy and trust between public and private sector parties that offer digital services and are building digital ecosystems for Canadian citizens. The framework was published by the Digital Identification and Authentication Council of Canada ([the DIACC](#)), a non-profit coalition of public and private sector organizations.



Portage offers an end-to-end solution to design, deploy, and maintain a modern approach to collecting and managing Terms of Use.

The PCTF establishes standards for 10 components of privacy and trust within digital services and ecosystems. One of those 10 components defines a better way to perform “[Notice & Consent](#)”<sup>1</sup> for digital services and ecosystems. Organizations can follow this component to design and deploy a better approach to their Terms of Use.

Specifically, this component offers [detailed guidance](#)<sup>2</sup> on how to:

- **Formulate Notice:** How to generate a statement that accurately and clearly describes the information the digital service will collect and how it will be used.
- **Request Consent:** How present this Notice to an end user, and to give them the capability to accept or decline consent to its conditions.
- **Record Consent:** How to make and retain a persistent record of the Notice’s consent conditions and the end user’s consent decision.
- **Manage Consent:** How to manage the full lifecycle of the consent decision, including how to review, renew, expire and revoke consent decisions.

The PCTF – and other emerging frameworks – provides clear guidance that anyone can follow to update their approach to Terms of Use and other privacy and consent processes. However, most organizations lack the time, expertise, and resources to do so on their own, and would benefit from working with a partner who can guide them through this process – a partner like Portage.

1. DIACC. Pan-Canadian Trust Framework™ Notice & Consent. <<https://diacc.ca/trust-framework/pctf-notice-consent/>>

2. DIACC. PCTF Notice & Consent Component Overview. <[https://diacc.ca/wp-content/uploads/2020/09/PCTF-Notice-Consent-Component-Overview-Final-Recommendation\\_V1.0.pdf](https://diacc.ca/wp-content/uploads/2020/09/PCTF-Notice-Consent-Component-Overview-Final-Recommendation_V1.0.pdf)>

# Meet Portage: A Modern Approach to Data Privacy and Consent

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Portage CyberTech™ offers an end-to-end solution that helps organizations build trusted digital solutions and ecosystems. Portage's solution can uniquely help organizations take a new approach to how they draft and deploy their Terms of Use, or to otherwise build processes that collect truly informed consent from end users.

Portage's end-to-end solution is composed of two key elements:

- **Digital Transformation Consulting – Center of Excellence:** Portage's consultants are thought leaders on the topics of trust, privacy, consent, and compliance, and have played a key role in drafting and updating the PCTF. They can guide you through every stage of building, extending, and maintaining your digital transformation projects., They offer a full suite of consultations and professional services to guide organizations towards updating their own Terms of Use.
- **Technology Tools and Platforms:** Portage™ offers a portfolio of tools and platforms for building digital trust solutions, all of which are designed and developed in alignment with leading trust, privacy and consent, and compliance frameworks. Their tools provide a simplified and modern approach to managing data privacy and consent, as well as implementing identity and access management, credentials verifications, and more, that help organizations create digital services and ecosystems that are compliant with the PCTF and other forward-looking frameworks.

Portage offers an end-to-end solution to design, deploy, and maintain a modern approach to collecting and managing Terms of Use, and aligns many other core processes with modern standards for digital trust, identity, and privacy.

## Take a New Approach to Terms of Use – Starting Today

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Terms of Use are not going away. Every year organizations collect, utilize, and share more data from their end users. Every year they face increased scrutiny regarding what they do with end user data and how they manage their users' consent to do so. Organizations must get ahead of these trends, take a proactive stance, and create a modern approach to collecting and managing data privacy and consent.

And Portage can help you do it. Reach out today and learn how Portage's end-to-end solution can give you trusted, compliant, and secure digital services and ecosystems.

[www.portagecybertech.com](http://www.portagecybertech.com)