

## **myClinicalExchange.com Term of Use Agreement**

These Terms of Use were updated as of October 15, 2018.

These Terms of Use (the "Terms") apply to all online visitors of myClinicalExchange.com (the "Site"). By using this Site, creating an account on the Site, or purchasing services through the Site, you ("you" or "User") agree to the terms and conditions in this Agreement between you and myClinicalExchange, LLC ("myClinicalExchange"). If you do not agree to these outlined terms and conditions (the "Terms of Use" or "Agreement"), your only recourse is to discontinue use of the Site and not purchase any additional products or services from the Site. myClinicalExchange reserves the right to make any changes to these Terms of Use and/or our Privacy Policy (which is incorporated herein by reference) without prior notification to you. You should re-read this Agreement containing the Terms of Use and Privacy Policy from time to time in order that you stay informed as to any such changes. If we make changes to our Terms of Use and Privacy Policy and you continue to use our Site, including the use of your account through the Site, you are impliedly agreeing to the Terms of Use and Privacy Policy expressed herein. We strongly suggest that each time you make a purchase through this Site, you re-read the Terms of Use.

If you have any questions about these terms, contact us at [support@myclinicalexchange.com](mailto:support@myclinicalexchange.com). myClinicalExchange will provide technical support only from Monday to Friday from 8:00 AM to 5:00 PM MST, excluding Colorado and federal holidays.

myClinicalExchange is a website that allows medical institutions such as hospitals, clinics, and offices (each a "Medical Center") that have students ("Student User") from educational institutions such as schools, nursing clinics, and universities (each an "Educational Institution") to manage the Medical Center's relationship with the Student, including rotation schedules, notes about the rotation, the Student User's documentation necessary to perform rotations at the Medical Center, and other functions as allowed by the Site.

### **Types of Users**

Student Users create an account through the Site (or have one created by their affiliated Educational Institute or Medical Center) through which the Student User may upload documents required by the Educational Institution or Medical Center, have third parties upload documents required by the Educational Institution or Medical Center, and may receive information from their Educational Institution or Medical Center for things such as rotation schedules, missing documentation, and other notifications. Student Users may be associated with one or more Educational Institution and/or Medical Center.

Educational Administrators either have an account created by myClinicalExchange or by an Educational Administrator already associated with the Educational Institution. Each Educational Administrator is granted rights based on his or her role in the Educational Institution. Educational Administrators may be able to perform tasks such as viewing student documents, assigning students to specific Medical Centers, or otherwise communicating with other Educational

Administrators, Student Users and Medical Administrators. Educational Administrators may be associated with multiple Student Users and Medical Centers. If an individual works for more than one Educational Institution, the individual must have Educational Administrator accounts with each Educational Institution.

Instructor Users create an account through the Site (or have one created by their affiliated Educational Institute or Medical Center) through which the Instructor User may upload documents required by the Educational Institution or Medical Center, have third parties upload documents required by the Educational Institution or Medical Center, and may receive information from their Educational Institution or Medical Center for things such as rotation schedules, missing documentation, and other notifications. Instructor Users may be associated with one or more Educational Institution and/or Medical Center.

Medical Administrators either have an account created by myClinicalExchange or by a Medical Administrator already associated with the Medical Center. Each Medical Administrator is granted rights based on his or her role in the Medical Center. Medical Administrators may be able to perform tasks such as viewing student documents, assigning students to rotations, or otherwise communicating with other Medical Administrators, Student Users and Educational Administrators. Medical Administrators may be associated with multiple Student Users and Educational Institutions. If an individual works for more than one Medical Center, the individual must have Medical Administrator accounts with each Medical Center.

General Users include Student Users, Instructor Users, Educational Administrators, Medical Administrators and general Users of the Site, including those who only view the Site.

### **Student Users**

The following section applies for Users that have an account with myClinicalExchange.com as a student provider where information is stored about you (“Student Users”).

All Student Users have an account with myClinicalExchange.com which is either created by an Educational Administrator, a Medical Administrator, or directly by the Student User. By accessing your Student Account for the first time, you agree and acknowledge that you are authorizing the creation of the account, if you did not create it yourself, and the storage of personal identifiable information (“PII”) about you in the account whether it is uploaded by you or a third-party.

Each Educational Institution and Medical Center require different PII and additional information (collectively, “Student Information”) about a Student User. The information that may be required includes, but is not limited to, background information, credit reports, drug test results, medical history, including vaccine history, educational transcripts, work history, work authorizations, and other information required to perform services at the Medical Center. In addition, information that is not considered PII but is about the Student User may also be entered into the myClinicalExchange.com system, including, but not limited to, rotation information, notes about a student’s performance, and reports by individuals at the Educational Institution and/or Medical

Center. You agree and acknowledge that your associated Educational Institution and/or Medical Center may have partnered with a third-party to receive information about you, such as a credit reporting agency. You agree and acknowledge that myClinicalExchange can receive any information about you through these third-party partners whether in a form that gets stored to myClinicalExchange's servers or through a link to the information that is available to authorized Users to view the information.

You agree and acknowledge that myClinicalExchange is bound by agreements with both the Medical Centers that you perform services at and your Educational Institutions. Due to these agreements and legal requirements, myClinicalExchange may not be able to delete any or all of the Student Information that is uploaded to your account, whether by you or a third-party without the express written permission of both the Medical Center and/or the Educational Institution. You agree and acknowledge that the Medical Center and/or Educational Institution may download Student Information and may have additional terms regarding the length of time the records are stored.

Each Student User must have a unique user identification and password (collectively, an "Account"). You agree and acknowledge that you will not share any information related to your Account, such as user identification and password with others. You agree that you will be the only one that uses your account and that it cannot be transferred or shared with others.

Unless paid for by the Student User's Educational Institution or Medical Center, each Student User must pay a non-refundable annual fee to myClinicalExchange to access and use the Site, unless such fee is paid by an Educational Institution or Medical Center. The amount of the fee will be determined solely by myClinicalExchange. This amount is non-refundable and valid based on the term of registration. You agree and acknowledge that your Educational Institute and/or Medical Center may require that you subscribe for more than one year.

As a Student User, you agree, authorize, consent and acknowledge that individuals associated with your Educational Institution and Medical Center will be able to access, maintain and share any content or information within the educational and medical organizations (including but not limited to any hospital, clinic, office or agency where the Student User performs a clerkship or rotation) associated with the Student User, including but not limited to: contact information; immunization and health records; background information; drug screening results information; date of birth (if applicable), Social Security Number (if applicable); HIPPA or FERPA information and others, related to Student User's Account. Student User also understands that myClinicalExchange has access to the foregoing information and further authorizes and consents to myClinicalExchange's use of the information to provide support to and for Student Users, Educational Administrators, and Medical Administrator.

As a Student User, you agree and acknowledge that myClinicalExchange is only a repository of information and a Site that allows Medical Administrators and Educational Institutions to manage the role of Student Users in their organizations. myClinicalExchange does not guarantee any rotations or any outcomes of any uploading of documents. If you have any questions about the use

of myClinicalExchange, the use of your information, or your relationship with the Educational Institution and/or Medical Center, please contact your Educational Institution and/or Medical Center.

### **Educational Instructors/Clinical Faculties**

The following section applies for Users that have an account with myClinicalExchange.com as a student provider where information is stored about you (“Student Users”).

All Instructors Users have an account with myClinicalExchange.com which is either created by an Educational Administrator, a Medical Administrator, or directly by the Instructor User. By accessing your Instructor Account for the first time, you agree and acknowledge that you are authorizing the creation of the account, if you did not create it yourself, and the storage of personal identifiable information (“PII”) about you in the account whether it is uploaded by you or a third-party.

Each Educational Institution and Medical Center require different PII and additional information (collectively, “Instructor Information”) about an Instructor User. The information that may be required includes, but is not limited to, background information, credit reports, drug test results, medical history, including vaccine history, educational transcripts, work history, work authorizations, and other information required to perform services at the Medical Center. In addition, information that is not considered PII but is about the Instructor User may also be entered into the myClinicalExchange.com system, including, but not limited to, rotation information, notes about an Instructor’s performance, and reports by individuals at the Educational Institution and/or Medical Center. You agree and acknowledge that your associated Educational Institution and/or Medical Center may have partnered with a third-party to receive information about you, such as a credit reporting agency. You agree and acknowledge that myClinicalExchange can receive any information about you through these third-party partners whether in a form that gets stored to myClinicalExchange’s servers or through a link to the information that is available to authorized Users to view the information.

You agree and acknowledge that myClinicalExchange is bound by agreements with both the Medical Centers that you perform services at and your Educational Institutions. Due to these agreements and legal requirements, myClinicalExchange may not be able to delete any or all of the Instructor Information that is uploaded to your account, whether by you or a third-party without the express written permission of both the Medical Center and/or the Educational Institution. You agree and acknowledge that the Medical Center and/or Educational Institution may download Student Information and may have additional terms regarding the length of time the records are stored.

Each Instructor User must have a unique user identification and password (collectively, an “Account”). You agree and acknowledge that you will not share any information related to your Account, such as user identification and password with others. You agree that you will be the only one that uses your account and that it cannot be transferred or shared with others.

Unless paid for by the Instructor User's Educational Institution or Medical Center, each Instructor User must pay a non-refundable annual fee to myClinicalExchange to access and use the Site, unless such fee is paid by an Educational Institution or Medical Center. The amount of the fee will be determined solely by myClinicalExchange. This amount is non-refundable and valid based on the term of registration. You agree and acknowledge that your Educational Institute and/or Medical Center may require that you subscribe for more than one year.

As a Instructor User, you agree, authorize, consent and acknowledge that individuals associated with your Educational Institution and Medical Center will be able to access, maintain and share any content or information within the educational and medical organizations (including but not limited to any hospital, clinic, office or agency where the Student User performs a clerkship or rotation) associated with the Student User, including but not limited to: contact information; immunization and health records; background information; drug screening results information; date of birth (if applicable), Social Security Number (if applicable); HIPPA information and others, related to Instructor User's Account. Instructor User also understands that myClinicalExchange has access to the foregoing information and further authorizes and consents to myClinicalExchange's use of the information to provide support to and for Student Users, Educational Administrators, and Medical Administrator.

As an Instructor User, you agree and acknowledge that myClinicalExchange is only a repository of information and a Site that allows Medical Administrators and Educational Institutions to manage the role of Instructor Users in their organizations. myClinicalExchange does not guarantee any rotations or any outcomes of any uploading of documents. If you have any questions about the use of myClinicalExchange, the use of your information, or your relationship with the Educational Institution and/or Medical Center, please contact your Educational Institution and/or Medical Center.

### **Educational Administrators**

The following section applies for Users that have an account with myClinicalExchange.com as an administrator with an Educational Institution (an "Educational Administrator") where the administrator can view some or all of a student's data, upload student data, and manage student accounts.

You agree and acknowledges that you are subscribing to myClinicalExchange services for your organization and that you are fully authorized to do so on behalf of that organization, and in so doing bind all parties who make use of any myClinicalExchange service or system in connection with the organization's myClinicalExchange account to myClinicalExchange's Terms of Use. This may include parties within your organization, such as other educational administrators and also parties outside the direct purview of the organization, such as independent consultants whom you may grant access to your myClinicalExchange account or create an Educational Administrator account for.

You agree and acknowledges that you myClinicalExchange is a contractor working on your behalf and is therefore considered a "school official" for FERPA purposes. You certify that you have indicated in your annual FERPA notification to parents that you use contractors to provide certain services on behalf of your district/organization. If required by state or federal law, you agree and acknowledge that you have listed myClinicalExchange LLC. specifically as one of your contractors.

You agree and acknowledge that you are contracting with myClinicalExchange to store Student Information about students in your organization. Such Student Information may include, but is not limited to, information received from third parties such as credit reporting agencies and drug testing companies, information inputted into the Site manually by Student Users such as vaccine records and references, and information received directly from your organization such as class transcripts and the Medical Centers such as student rotation data where your Student/Instructor Users perform services. By using the myClinicalExchange system and services, you grant myClinicalExchange unlimited permission to parse, store, and manage any and all Student Information provided to myClinicalExchange by you or by a third-party based on your request in order to provide you the Services. In addition, you agree and acknowledge that if you are required to have Student and or Instructor Users sign any authorizations to receive information from third-parties, such as any authorizations under credit reporting or background reporting laws, that you will have all required forms signed and that you will upload a copy of such authorization into myClinicalExchange.

You agree and acknowledge that FERPA, FCRP, and HIPAA requires that educational organizations and use reasonable methods to ensure that their users obtain access only to the Student Information for which they have a legitimate interest and which they are authorized to view. Therefore, you agree and acknowledge that you will set up and maintain user permission profiles within the myClinicalExchange system that appropriately restrict access to Student Information according to the user's roles and responsibilities within your organization.

You are responsible for providing adequate training to your users with regard to all state and federal laws regarding the use of Student Information, including, but not limited to, the Family Educational Rights Privacy Act ("FERPA"), Health Insurance Portability and Accountability Act ("HIPAA"), Fair Credit Reporting Act ("FCRA"), and appropriate data use. You agree and acknowledge that you assume all responsibility for the potential identifiability of individual students whether by name or by inference according to FERPA, HIPAA, and FCRA guidelines. You agree and acknowledge that myClinicalExchange is not responsible for misuse or misinterpretation of Student Information by your organization, anyone else in connection in any other way with the your myClinicalExchange account, or by the public.

You agree and acknowledge that if you use a third-party partner to provide information to myClinicalExchange, myClinicalExchange may only receive a link to view such information and may not receive the actual information. If the data is not actually uploaded to myClinicalExchange,

myClinicalExchange can only guarantee access to that data while it is made available by the third-party.

### **Medical Administrator/Preceptor/Unit Notifier**

The following section applies for Users that have an account with myClinicalExchange.com as a medical administrator where the individual can perform tasks such as scheduling students, reviewing student records, and uploading information about students (“Medical Administrators”).

You agree and acknowledges that you are subscribing to myClinicalExchange services for your organization and that you are fully authorized to do so on behalf of that organization, and in so doing bind all parties who make use of any myClinicalExchange service or system in connection with the organization's myClinicalExchange account to myClinicalExchange's Terms of Use. This may include parties within your organization, such as doctors, nurses, administrators and also parties outside the direct purview of the organization, such as independent consultants whom you may grant access to your myClinicalExchange account or create a Medical Administrator account for.

You agree and acknowledge that you are contracting with myClinicalExchange to store information about students who perform services in your Medical Center. By using the myClinicalExchange system and services, you grant myClinicalExchange unlimited permission to parse, store, and manage any and all Student Information provided to myClinicalExchange by you or by a third-party based on your request in order to provide you the Services.

You agree and acknowledge that FERPA, HIPAA and FCRA requires that organizations use reasonable methods to ensure that their users obtain access only to those records for which they have a legitimate interest. Therefore, you agree and acknowledge that you will set up and maintain user permission profiles within the myClinicalExchange system that appropriately restrict access to Student Information according to the user’s roles and responsibilities.

You are responsible for providing adequate training to your users with regard to all state and federal laws regarding the use of Student Information, including, but not limited to, the Family Educational Rights Privacy Act (“FERPA”), Health Insurance Portability and Accountability Act (“HIPAA”), Fair Credit Reporting Act (“FCRA”), and appropriate data use. You agree and acknowledge that you assume all responsibility for the potential identifiability of individual students whether by name or by inference according to FERPA, HIPAA, and FCRA guidelines. You agree and acknowledge that myClinicalExchange is not responsible for misuse or misinterpretation of Student Information by your organization, anyone else in connection in any other way with the your myClinicalExchange account, or by the public.

You agree and acknowledge that if you use a third-party partner to provide information to myClinicalExchange, myClinicalExchange may only receive a link to view such information and may not receive the actual information. If the data is not actually uploaded to myClinicalExchange,

myClinicalExchange can only guarantee access to that data while it is made available by the third-party.

### **All Users**

The following section applies for all Users of the Site, including both those Users that have an account of any type and those Users who do not have an account.

You may use the Site only as permitted by these Terms of Use and only in a manner consistent with all applicable federal and state laws, rules and regulations, and generally accepted practices or guidelines in relevant jurisdictions, including any laws governing the export of data to or from the United States. You agree not to use any deep-linking, robots, spiders, data-mining, or other automatic or manual device, software, program, code, algorithm, or methodology to access, copy, or monitor any portion of the Site or Content, or in any way reproduce or circumvent the navigational structure or presentation of the Site or Content, or obtain or attempt to obtain any materials or information through any means not purposely made available by us through the Site. We reserve the right to take measures to prevent any such activity. You further agree: (a) not to harvest or collect email addresses or other contact information of other users by electronic or other means for the purposes of sending unsolicited emails, or other unsolicited communications; (b) not to use this Site in any unlawful manner or in any other manner that could damage, disable, overburden, or impair the Site; (c) not to use automated scripts to collect information from or otherwise interact with the Site; (d) not to forge headers or otherwise manipulate identifiers in order to disguise the origin of any message or transmittal you send to us on or through the Site or any service offered on or through the Site; (e) not to impersonate or pretend that you are any other person or falsely claim you represent another person; and/or (f) use the Site for any fraudulent, unlawful, harassing or abusive purpose as solely determined by myClinicalExchange.

You agrees that you (a) will not provide any false personal information on the Site, or create an Account for anyone not authorized by your organization or yourself; (b) create an account for any User who has had an account terminated by myClinicalExchange; (c) will not use the Site if you are under 13 years of age; (d) will keep your contact information accurate and current; (e) will not share your password or let any other person access your Account, or do anything else that might jeopardize the security of your Account; and/or (f) will not transfer your Account to anyone.

Except those portions of the Site that are publicly available, you will not disclose, demonstrate, publish or post any information about the Site in any manner to a third-party without the prior written consent from myClinicalExchange.

You agree and acknowledge that myClinicalExchange may need to view any or all Student Information for purposes of providing services to our Users.

You agree and acknowledge that Student Information provided to myClinicalExchange is maintained on secure, dedicated web servers and is encrypted during transfer (both upload and download) using SSL encryption software. myClinicalExchange will make every reasonable effort

to maintain the confidentiality of information that can identify individual students during transfer within myClinicalExchange's infrastructure. However, myClinicalExchange cannot guarantee any confidentiality for Student Information that is downloaded to user's systems.

myClinicalExchange is not responsible for any errors in the information that is uploaded or made available by any Users on our Site. You agree and acknowledge that the party that uploaded or made the information available on our Site is responsible for the contents of such information.

### **Intellectual Property Rights**

All content on the Site, including, but not limited to, designs, text, graphics, pictures, video, information, music, sound, and other files, and their selection and arrangement (the "Site Content"), are the proprietary property of myClinicalExchange with all rights reserved. No Site Content may be modified, copied, distributed, framed, reproduced, republished, downloaded, scraped, displayed, posted, transmitted, or sold in any form or by any means, in whole or in part, without myClinicalExchange's prior written permission. Any violation of this policy may result in a copyright, trademark, or other intellectual property right infringement that may subject a User to civil and/or criminal penalties. This Site contains copyrighted material, trademarks, and other proprietary information, including, but not limited to, text, software, photos, video, graphics, music, sound, and the entire contents of myClinicalExchange protected by copyright as a collective work under the United States copyright laws. myClinicalExchange owns a copyright in the selection, coordination, arrangement, and enhancement of such content, as well as in the content original to it. You may not modify, publish, transmit, participate in the transfer or sale, create derivative works, or in any way exploit, any of the content, in whole or in part. You may not upload or republish Site Content on any Internet, Intranet, or Extranet site or incorporate the information in any other database or compilation. myClinicalExchange does not permit use of any data mining, robots, scraping, or similar data-gathering or extraction methods. Unless explicitly stated herein, nothing in these Terms of Use shall be construed as conferring any license to intellectual property rights, whether by estoppel, implication, or otherwise. The foregoing provisions of this section apply equally to and are for the benefit of myClinicalExchange, its subsidiaries, affiliates, third-party content providers, and licensors, and each shall have the right to assert and enforce such provisions directly or on its own behalf. myClinicalExchange specifically agrees and acknowledges that its claim of copyright for information on the Site does not apply to any Student Information which shall remain the sole property of the owner of such information.

myClinicalExchange and our logo are trademarks of myClinicalExchange, LLC. All rights in respect of these trademarks are hereby expressly reserved. Trademarks that are located on the Site shall not be deemed to be in the public domain but rather the exclusive property of myClinicalExchange, LLC, unless such site is under license from the trademark owner thereof in which case such license is for the exclusive benefit and use of myClinicalExchange, unless otherwise stated.

### **Term and Termination**

Termination by Student User. If a Student User chooses to discontinue using myClinicalExchange services, myClinicalExchange will archive and retain its copy of the Student Information unless a written request by the Student User to destroy the Student Information is received and the destruction of such information will not violate myClinicalExchange's agreement with any Medical Center, Educational Institution, or law or regulation. If such destruction is not allowed, myClinicalExchange will inform the Student User. A Student User may terminate at any; however, there are no refund of any fees already paid.

Termination by Educational Institution or Medical Center. If a Medical Center or Educational Institution chooses to discontinue using myClinicalExchange services, myClinicalExchange will archive and retain its copy of all information associated with the organization. All information will be available for one year following termination unless otherwise agreed to in writing by myClinicalExchange. An Educational Institution or Medical Center may terminate at any; however, there are no refund of any fees already paid.

Termination by myClinicalExchange. myClinicalExchange may terminate this Agreement at any time. Without limiting the foregoing, myClinicalExchange shall have the right to immediately terminate and/or suspend any account of any User and/or the complete account of any organization:

- a. in the event of any conduct by that account user that myClinicalExchange, in its sole discretion, considers to be unacceptable;
- b. in the event of any breach of this Agreement;
- c. for failure to pay for the service as required on the Site; and/or
- d. in the case that myClinicalExchange believes that the user is violating state or federal law.

### **Data Security, Limitation of Liability, and Warranties**

myClinicalExchange takes the security of the Site and Student Information seriously and take efforts to maintain the security, integrity and confidentiality of the Site. myClinicalExchange has implemented industry standard security measures. Despite the efforts of myClinicalExchange, factors beyond its control may result in the disclosure of Student Information or other User identifiable information. Accordingly, myClinicalExchange cannot guarantee that Student Information will be secure under all circumstances and myClinicalExchange offers no warranties or representations with regards to the maintenance or non-disclosure of Student Information or other User identifiable information. All Users agree that myClinicalExchange shall not be liable, under any circumstance, and User, for and on behalf of User and User's heirs, successors, assigns, and legal representatives, and User hereby forever releases and discharges myClinicalExchange from any and all liabilities, claims, damages, actions, and losses in any way related to or connected with any loss or disclosure of Student Information or other User identifiable information.

YOU EXPRESSLY AGREE THAT USE OF THIS SITE IS AT YOUR SOLE RISK. IN NO EVENT WILL MYCLINICALEXCHANGE OR ITS DIRECTORS, MEMBERS, EMPLOYEES, AFFILIATES, OR AGENTS BE LIABLE TO YOU OR ANY THIRD PERSON FOR ANY

INDIRECT, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, SPECIAL, OR PUNITIVE DAMAGES ARISING FROM YOUR USE OF THE SITE. NEITHER MYCLINICALEXCHANGE, ITS AFFILIATES NOR ANY OF THEIR DIRECTORS, MEMBERS, RESPECTIVE EMPLOYEES, AGENTS, THIRD-PARTY CONTENT PROVIDERS OR LICENSORS WARRANT THAT USE OF THE SITE WILL BE UNINTERRUPTED OR ERROR FREE; NOR DO THEY MAKE ANY WARRANTY AS TO (I) THE RESULTS THAT MAY BE OBTAINED FROM USE OF THIS SITE, OR (II) THE ACCURACY, RELIABILITY OR CONTENT OF ANY INFORMATION OR SERVICE PROVIDED ON THIS SITE IF SUCH INFORMATION IS RECEIVED FROM A THIRD-PARTY. THIS DISCLAIMER OF LIABILITY APPLIES TO ANY DAMAGES OR INJURY, EITHER BODILY OR FINANCIALLY, CAUSED BY ANY FAILURE OF PERFORMANCE, ERROR, OMISSION, INTERRUPTION, DELETION, DEFECT, DELAY IN OPERATION OR TRANSMISSION, COMPUTER VIRUS, COMMUNICATION LINE FAILURE, THEFT OR DESTRUCTION OR UNAUTHORIZED ACCESS TO, ALTERATION OF, OR USE OF RECORD, WHETHER FOR BREACH OF CONTRACT, TORTIOUS BEHAVIOR, NEGLIGENCE, OR UNDER ANY OTHER CAUSE OF ACTION RESULTING FROM THE USE OF THIS SITE. IN NO EVENT SHALL MYCLINICALEXCHANGE, OR ANY PERSON OR ENTITY INVOLVED IN CREATING, PRODUCING, OR DISTRIBUTING THIS SITE OR THE CONTENTS HEREOF, INCLUDING ANY REPORTS, TABLES, OR OTHER INFORMATION THAT YOU DOWNLOAD FROM THE SITE, BE LIABLE FOR ANY DAMAGES, INCLUDING, WITHOUT LIMITATION, DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES ARISING OUT OF THE USE OF OR INABILITY TO USE THIS SITE. WEBSITE USER HEREBY ACKNOWLEDGES THAT THE PROVISIONS OF THIS SECTION SHALL APPLY TO ALL CONTENT ON THIS SITE.

MYCLINICALEXCHANGE'S LIABILITY TO YOU FOR ANY CAUSE WHATSOEVER, AND REGARDLESS OF THE FORM OF THE ACTION, WILL AT ALL TIMES BE LIMITED TO THE AMOUNT PAID TO MYCLINICALEXCHANGE IN THE TWELVE MONTHS PRIOR TO THE INCIDENT RESULTING IN LIABILITY. YOU ACKNOWLEDGE THAT IF NO FEES ARE PAID TO MYCLINICALEXCHANGE, YOU SHALL BE LIMITED TO INJUNCTIVE RELIEF ONLY, UNLESS OTHERWISE PERMITTED BY LAW, AND SHALL NOT BE ENTITLED TO DAMAGES OF ANY KIND FROM MYCLINICALEXCHANGE, REGARDLESS OF THE CAUSE OF ACTION.

CERTAIN STATE LAWS DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES OR THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES. IF THESE LAWS APPLY TO YOU, SOME OR ALL OF THE ABOVE DISCLAIMERS, EXCLUSIONS, OR LIMITATIONS MAY NOT APPLY TO YOU, AND YOU MAY HAVE ADDITIONAL RIGHTS.

LICENSED USER FURTHER AGREES TO INDEMNIFY AND HOLD LICENSOR HARMLESS AGAINST ANY CLAIMS INCURRED BY LICENSOR ARISING OUT OF OR IN CONJUNCTION WITH LICENSED USER'S BREACH OF THIS AGREEMENT, AS WELL

AS ALL REASONABLE COSTS, EXPENSES AND ATTORNEYS' FEES INCURRED THEREIN. LICENSOR'S TOTAL

### **Arbitration**

myClinicalExchange and Users agree and acknowledge that it is in our individual and mutual best interest to work together quickly and amicably to resolve any disputes which may arise with respect to the provisions of these Terms of Use. In the event that such an issue does arise for you, you agree to notify myClinicalExchange directly and promptly, and to provide reasonable time for myClinicalExchange to respond and, if applicable, for myClinicalExchange to propose and/or take appropriate action toward resolving the issue.

Any dispute arising under this Agreement will be subject to binding arbitration by a single Arbitrator with the American Arbitration Association (AAA), in accordance with its relevant industry rules, if any. The parties agree that this Agreement will be governed by and construed and interpreted in accordance with the laws of the State of Colorado. The arbitration will be held in Colorado. The Arbitrator will have the authority to grant injunctive relief and specific performance to enforce terms of this Agreement.

If any litigation or arbitration is necessary to enforce the terms of this Agreement, you agree that should the prevailing party will be entitled to their reasonable attorney's fees, court costs, and all other expenses, whether or not taxable by the court as costs, in addition to any other relief to which the prevailing party may be entitled, including, but not limited to, any costs of collection.

### **Uptime and Equipment**

You acknowledge that the Internet is not a secure environment and sometimes there are interruptions in service or events that are beyond the control of myClinicalExchange. While myClinicalExchange makes reasonable precautions against loss or theft of Student Information, myClinicalExchange shall not be responsible for any Student Information lost or stolen while transmitting information on the Internet. While it is myClinicalExchange's objective to make the Site accessible 24 hours per day, 7 days per week, the Site may be unavailable at any time for any reason including, without limitation, routine maintenance. Therefore, it is your responsibility to keep copies of any Student Information you upload to the Site.

You are responsible for obtaining and maintaining all internet connections, computer hardware, printers, and other equipment needed for access to and use of this Site, to use the daily training workouts, including purchasing any software necessary to view or use parts of the Site. You are responsible for all charges related to the obtaining and maintaining of that equipment, including any charges for software or charges to access the Internet. myClinicalExchange shall not be liable for any damages to a user's equipment resulting from the use of this Site.

### **Third-Party Sites**

The Site may contain links to other web sites ("Third-party Sites") as well as articles, photographs, text, graphics, pictures, designs, information, or items belonging to or originating from third parties (the "Third-party Content"). Such Third-party Sites and Third-party Content are not investigated, monitored, or checked for accuracy, appropriateness, or completeness by myClinicalExchange. myClinicalExchange is not responsible for any Third-party Sites accessed through the Site or any content posted by any Website Users on this Site or any Third-party Sites regarding myClinicalExchange. If you decide to leave the Site and access the Third-party Sites, you do so at your own risk and you should be aware that myClinicalExchange's terms and policies no longer govern. You should review the applicable terms and policies, including privacy and data gathering practices, of any site to which you navigate from this Site.

Any opinions, advice, statements, services, offers, or other information or content expressed or made available by third parties are those of the respective author(s) and not of myClinicalExchange. Neither myClinicalExchange nor any third-party provider of information guarantees the accuracy, completeness, or usefulness of any content, nor its merchantability or fitness for any particular purpose.

### **Miscellaneous**

myClinicalExchange shall not redisclose identifiable data records unless required by court order or with the express written consent of the Student User. Any court order or other such request/demand for data shall be communicated immediately to you if allowed by law. At your sole discretion and expense, you can take legal action to quash any subpoena served on myClinicalExchange for Student Information.

Student Users, Educational Administrators, and Medical Administrators understand and agree that they are subscribing to the services as they exist as of the time the account is created. myClinicalExchange may, during the term, and at myClinicalExchange's sole discretion unless otherwise agreed separately in writing, add or enhance services or features, make corrections, alter navigation or display layouts or elements, and/or develop and implement suggestions, ideas, and recommendations by others, any or all of which myClinicalExchange may offer as enhancements to existing services or as additional services for an additional charge.

Client may choose to participate in additional optional services with myClinicalExchange that require a separate annual agreement, such as Electronic Records Transfer (ERT). Such agreements are separate from and in addition to these Terms of Use.

The waiver by myClinicalExchange of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by myClinicalExchange.

If any provision of this Agreement is held invalid by a court of competent jurisdiction, such invalidity shall not affect the enforceability of any other provisions contained in this Agreement and the remaining portions of this Agreement shall continue in full force and effect.

You agree to indemnify and hold myClinicalExchange, its subsidiaries and affiliates, and each of their directors, officers, agents, contractors, partners, and employees, harmless from and against any loss, liability, claim, demand, damages, costs, and expenses, including reasonable attorneys' fees, arising out of or in connection with any use of the Site, your conduct in connection with the Site, or with other users of the Site, or any violation of this Agreement or of any law or the rights of any third-party.

Rights and obligations created by this contract shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns.