

# Terms of Service

Last Updated: Nov 3, 2023

## 1. Acceptance of Agreement

These Terms of Service, together with the terms of your signed order proposal (“**Proposal**”), collectively forms the Customer Agreement (“**Agreement**”) between you (“**you**”) and MedTrainer, Inc. and any of our associated and subsidiary companies (collectively, “**MedTrainer**”, “**we**” or “**us**”) regarding your use of our web platform (“**Sites**”) and the services provided through the Sites (“**Services**”).

You represent that you are authorized to enter into this Agreement on behalf of the organization executing the Proposal (or, if applicable, in your individual capacity). Any individuals who are authorized to access the Services under the Agreement (“**End Users**”) do so subject to our End User Terms, available <https://medtrainer.com/terms/>. You agree that you or your organization, as applicable, is solely responsible for your End Users’ compliance with the End User Terms.

This Agreement, including any policies or guidelines incorporated herein, constitutes the entire and only agreement between us and you, and supersedes all prior or contemporaneous agreements, representations, warranties, and understandings with respect to the Site and Services. This Agreement may be amended at any time by us in which case we will provide reasonable notice to you of any material modifications at the e-mail address you provided in the Proposal.

## 2. Fees and Payment

- 2.1 Except as otherwise specified in the Proposal or in this Section 2, all fees for Services are due and payable monthly in arrears (“**Fees**”). Some services must be paid in advance, such as provider enrollments with insurance payers, background checks, fee-based board certification verifications, and provider profile access within third party systems. In the event you elect to terminate this Agreement prior to the thirty (30)-day period before the scheduled renewal date of your contract, you will remain liable for payment of the aggregate contract amount. The amount due upon early cancellation prior to the end of the contract term is not a penalty, it is payment of the aggregate, agreed upon contract amount.
- 2.2 Fees accrue regardless of usage. In the event of an unsuccessful billing attempt, you will be notified, and your account may be suspended until your credit card information is updated. A forty-five dollar (\$45) processing fee will be assessed for any ACH rejection. All payments for services rendered are paid in advance for 30 days trailing such payment.
- 2.3 You must raise any dispute regarding Fees within ninety (90) days after the date payment is due. We will endeavor to resolve any disputes promptly. You waive any right to dispute a charge that is not raised and resolved within ninety (90) days from the date of the charge.
- 2.4 Your automated billing method, including credit card, ACH, etc., will be billed in accordance with the terms listed on your Proposal until your subscription is discontinued. If you want to use a different credit card or if there is a change in your credit card validity or expiration date, you may edit your credit card information by logging into your account. In the event of unsuccessful billing, you will be notified and your account may be suspended until you update your billing information with a valid credit card. You will remain responsible for all monthly charges incurred whether or not your account is in default or is suspended.
- 2.5 You will pay all applicable taxes applicable to the Services you purchase, except taxes on MedTrainer’s income or personnel. Taxes are determined by independent jurisdictions that MedTrainer does not control. Taxes may be added to MedTrainer invoices at the mandated rate without advanced notice to you. Any such taxes will be notated on any invoice issued by MedTrainer.

### 3. Users

- 3.1 You solely are responsible for verifying the identities and any credentials for any End Users. You acknowledge that we will follow your instructions regarding End Users to be given access to the Services and that we have no responsibility to verify the identities of your End Users or provide you with any information in respect of their use of the Services.
- 3.2 If you add authorized End Users and/or Services from our associate companies, such additional End Users and Services will be billed automatically to you in accordance with contracted rates as specified in the Proposal.
- 3.3 Additionally, MedTrainer regularly audits use of the Services to determine the number of End Users you have authorized. You acknowledge and agree that we may assess Fees at the rates stated in your Proposal for the total number of authorized End Users, as determined by any of our audits, and that your monthly Fees will thereafter be based on such number of End Users. [We reserve the right to unilaterally determine contracted rates and bill for additional End Users and/or Services whether or not such additional End Users and/or Services are readily quantifiable.] We are not obligated to apply any special pricing, promotions, or discount to newly requested End User activation(s) or the provision of additional Services.

### 4. Term and Termination

- 4.1 This Agreement commences on the date of the Proposal (or as otherwise specified in the Proposal), continuing in effect for the period specified in the Proposal (“**Term**”). If no length is listed in the Proposal the initial Term is sixty (60) months. The Term will automatically renew one day prior to the end of your contract and will continue to renew unless canceled by you a minimum of 30 days prior to the end of the Term. To cancel a renewal, email legal@medtrainer.com. By way of example, if your contract Renewal Date is June 30, you must request cancelation before June 1. Fees for applicable Software, Platform, and Service fees shall be automatically increased up to 10% annually upon the anniversary date of your contract.
- 4.2 If you breach any provision of this Agreement or any of your End User(s) violate the End User Terms, we may, in our sole discretion, pursue any or all of the following remedies: removal of your User Content (as defined in the End User Terms), immediate suspension of you and any End User(s)’ access the Services or, on not less than fifteen (15) days’ notice and provided the breach remains uncured, the termination of this Agreement.
- 4.3 Upon termination, the applicable provisions of this Agreement shall remain in full force and effect even upon termination of your registration with any of our Services.

### 5. Cycling of Users

Each End User account is personal to the individual creating the End User account. If you wish to add more End Users to the Services, you must contact us. “**Cycling**” is the replacement of any End User who has received access to the Services with any other individual. For example, cycling includes the intentional replacement or transfer of an End User who has received training, credentialing, compliance, or accreditation service with or to another person who has not received training, credentialing, compliance, or accreditation services. You must not allow multiple individuals to access the Services through the same End User account, or “cycle” or otherwise transfer an individual’s End User account to another individual. We audit End User cancellations and enrollments for compliance with this Section 6. We, in our sole discretion, determine whether a violation of this Section 6 and what amount(s), if any, are payable by you in respect of any violation. We will notify you of the assessment of additional usage charges via email, but we are not responsible if you fail to receive or review our notice of additional usage charges.

### 6. Feedback

- 6.1 We welcome feedback, comments and suggestions for improvements to the Services, and any content you may provide us to describe your experience of using the Services (“**Feedback**”). You acknowledge and expressly

agree that any contribution of Feedback does not and will not give or grant you any right, title or interest in the Services or in any such Feedback. All Feedback becomes the sole and exclusive property of the MedTrainer, and the MedTrainer may use and disclose Feedback in any manner and for any purpose whatsoever without further notice or compensation to you and without retention by you of any proprietary or other right or claim. You hereby assign to the MedTrainer any and all right, title and interest (including, but not limited to, any patent, copyright, trade secret, trademark, show-how, know-how, moral rights and any and all other intellectual property right) that you may have in and to any and all Feedback.

## 7. Third-Party Integrations

The Services include links to third-party websites and content, may include content labeled as provided by third parties, and may offer the ability to link or integrate third-party software, content or services (collectively, “**Third Party Services**”). We do not control Third Party Services. Regardless of the nature of the Third Party Services, whether accomplished programmatically, by linking, or any other method, you understand and agree that we are not responsible for any data changes, loss or breach resulting from your use, integration or reliance on any Third Party Services. Moreover, we will not be responsible for providing service to any provider who has been inadvertently labeled as inactive providers as a result of change made or caused by a client’s third-party integration.

## 8. HIPAA COMPLIANCE

8.1 You hereby agree that any Personal Information (as defined by applicable law, “PI”) and Protected Health Information, as defined by U.S. federal law (“**PHI**”) received or provided by reason of this Agreement shall not be disclosed, transferred, or sold to any party, except as otherwise provided for in this Agreement or by law. Moreover, the information shall only be communicated with the prior written consent of the person, or his/her attorney or guardian, to whom the PI and/or PHI pertains. You shall maintain the confidentiality of all PI and/or PHI and other information gained by reason of this Agreement, and shall return or certify the confidential destruction of such information if requested by us.

8.2 You and your employees and sub-contractors shall perform all obligations pursuant to these Terms and Conditions and any explicit Agreement between you and us, if any, in compliance with HIPAA and regulations enacted pursuant to this provision, successor law, and/or regulation. Pursuant to 45 CFR 164.502(e), you shall implement policies and procedures to safeguard PHI in accordance with the requirements of federal and state law.

8.3 You shall only use or disclose PHI as required to perform the services specified in this Agreement or as required by law and shall not use or disclose such PHI in any manner inconsistent with the use and disclosure restrictions mandated by HIPAA. You shall ensure PHI is not disclosed without authorization by establishing appropriate procedures and safeguards in accordance with the terms of this Agreement in addition to state and federal law. You shall not use the Services for the purpose of storing PHI. This requirement shall extend to the transmission, storage, and maintenance of electronic data that contains PHI for as long as the PHI is within your custody and control, even after the termination of this Agreement.

## 9. No Guarantee of Results; Additional Services

9.1 The Services include and reference educational content, some of which is directed to compliance with applicable legal standards, guidance toward insurance-network standards and preparation for certification or accreditation reviews or tests. You acknowledge that we do not and cannot guarantee that the Services will achieve any particular results for you or any End User(s). Using the Services does not mean that you or any End Users(s) will meet, comply with or be certified or accepted by any educational requirements, compliance requirements, health and safety requirements, human resource requirements, accreditation, continued accreditation, rights, privileges, provider enrollment submissions to insurance payers, and payer decisions to contract with specific providers. Those outcomes are outside of MedTrainer’s control.

9.2 Moreover, MedTrainer strongly recommends any healthcare provider not yet enrolled with any insurance payer or network (“**Insurer**”) refrain from procuring Services in anticipation of contracting with any Insurer. We cannot and do not guarantee you or any End User(s) will successfully contract with any insurance payer. We have no liability and offer no refunds, deductions or credits in relation to you or any End User(s)’ outcomes or relationships with any insurance payer. Do not buy access to the Services in anticipation of expectation of reimbursement from any Insurer. Do not provide health-care services or products to any individual in hopes that their Insurer may or will enroll you or your End User(s) as an “in-network” or preferred provider.

9.3 The Services and their content are based on our best of knowledge at the time they were prepared, not at the time you may access them. Training content is reviewed periodically, however the accuracy of the Services and their content are subject to inaccuracy due to factors beyond our control. We therefore do not guarantee that the training content will be up-to-date at any particular point in time.

## 10. DISCLAIMERS

10.1 TO THE FULLEST EXTENT PERMITTED BY LAW, EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT, MEDTRAINER HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT OF THIRD PARTIES’ RIGHTS, FITNESS FOR A PARTICULAR PURPOSE, QUALITY, ACCURACY, QUIET ENJOYMENT OR AVAILABILITY. THE SERVICES AND THEIR CONTENT ARE PROVIDED ON AN “AS IS” BASIS WITHOUT ANY WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED. MEDTRAINER AND OUR AFFILIATES, PARENTS AND SUBSIDIARIES, WITHOUT LIMITING THE FOREGOING, WE MAKE NO WARRANTY THAT (i) THE SERVICES AND MATERIALS AVAILABLE ON THE SERVICES WILL MEET YOUR REQUIREMENTS, (ii) THE SERVICES AND MATERIALS WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE, OR (iii) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICES OR MATERIALS WILL BE EFFECTIVE, ACCURATE OR RELIABLE.

10.2 ALL CONTENT PROVIDED BY OR THROUGH MEDTRAINER AND OUR AFFILIATES AND ANY OF OUR SERVICES MUST BE VIEWED AND EVALUATED BY YOU AND ANY END USER(S) TO ENSURE IT IS SUITABLE FOR YOUR OR THEIR PURPOSE. IN THE EVENT OF LINKS TO THIRD-PARTY CONTENT, WE DO NOT GUARANTEE THE INFORMATION PROVIDED ON EXTERNAL WEBSITES OR DOMAINS IS ACCURATE OR COMPLETE. WE HAVE NO CONTROL OVER THE CONTENT, ACTIVITIES, SECURITY OR PRIVACY POLICIES OF THIRD-PARTY CONTENT OR SERVICE PROVIDERS, AND WE ACCEPT NO RESPONSIBILITY FOR THE SAME.

10.3 WE DO NOT GUARANTEE CONTENT WILL BE ACCEPTED BY THIRD PARTY ACCREDITATION ENTITIES, STATES, OR OTHER LICENSING BODIES FOR ANY PURPOSE, QUALIFIES FOR PROFESSIONAL CONTINUING EDUCATION REQUIREMENTS OF ANY KIND, OR IS SPECIFICALLY SUITED FOR ANY FURTHER PURPOSE ANTICIPATED BY THE END USER. WE DO NOT GUARANTEE OR WARRANT THE OUTCOME OF OUR SERVICES, INCLUDING TRAINING AND ACCREDITATION SERVICES. WE DO NOT GUARANTEE THAT A USER OF THE SERVICES WILL BE ACCREDITED OR CREDENTIALLED BY A PARTICULAR ORGANIZATION. WE HAVE NO CONTROL OVER THE ACTIONS OF A CREDENTIALING ORGANIZATION OR ANY THIRD PARTIES INVOLVED IN ACCREDITATION OR CREDENTIALING AND ACCEPT NO RESPONSIBILITY FOR THE ACTIONS OF SUCH ORGANIZATIONS AND THIRD PARTIES. IN NO EVENT SHALL WE BE LIABLE TO YOU FOR THE ACTIONS OF ANY CREDENTIALING OR ACCREDITATION ORGANIZATIONS AND THIRD PARTIES IN REGARDING TO THE TRAINING AND CREDENTIALING SERVICES THAT WE PROVIDE.

10.4 THE CONTENT ON THE SERVICES MAY CONTAIN INACCURACIES OR TYPOGRAPHICAL ERRORS. WE MAKE NO REPRESENTATIONS OR WARRANTIES REGARDING THE ACCURACY, RELIABILITY, COMPLETENESS OR TIMELINESS OF THE SERVICES OR THEIR CONTENT. BY USING THE SERVICES, YOU AGREE TO THESE TERMS AND CONDITIONS OF USE, AND YOU AGREE TO USE THE SERVICES AT YOUR OWN RISK. WE MAY CHANGE THE SERVICES AT ANY TIME.

10.5 WE DO NOT WARRANT THAT THE SERVICES WILL OPERATE ERROR-FREE OR THAT THE SERVICES ARE FREE OF COMPUTER VIRUSES, WORMS, TROJAN HORSES OR OTHER HARMFUL SOFTWARE. IF YOUR USE OF THE SERVICES OR THEIR CONTENTS RESULTS IN THE NEED FOR SERVICING OR REPLACING EQUIPMENT OR DATA, WE ARE NOT RESPONSIBLE FOR THOSE COSTS. YOU ASSUME ALL RESPONSIBILITY AND RISK FOR YOUR USE OF THE SERVICES, WEB APPLICATIONS AND THE INTERNET GENERALLY.

10.6 SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES OR LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY MAY LAST, SO THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU. TO THE EXTENT PERMISSIBLE, ANY IMPLIED WARRANTIES THAT ARE NOT PERMITTED TO BE EXCLUDED ARE LIMITED TO NINETY (90) DAYS OR SUCH LONGER PERIOD AS APPLICABLE LAW REQUIRES.

10.7 A LACK OF COMPLIANCE WITH STATE-SPECIFIC CONTRACT LAW SHALL NOT VOID THIS AGREEMENT IN ITS ENTIRETY, BUT SHALL BE RELEVANT ONLY TO THE SPECIFIC APPLICABLE LAW AND THE CUSTOMER DIRECTLY AFFECTED BY SAID LAW.

## **11. Limits on Liability**

11.1 To the greatest extent permitted by law, in no event will MedTrainer be liable to you or any third party for any special, consequential or indirect damages whatsoever (including damages for lost profits, lost data, or business interruption) resulting from the use of or access to, or the inability to use or access, the Services or their content, whether based on warranty, contract, tort, or any other legal theory, and whether or not we have been advised of the possibility of such damages. Notwithstanding anything else herein to the contrary, our maximum liability to you for any type of damages shall be limited to the greater of (1) \$25,000 and (2) three months of service paid by you to MedTrainer in the six (6) months prior to the occurrence giving rise to the liability.

## **12. Indemnification**

You agree to defend, indemnify, and hold harmless us, and our affiliates, managers, members, officers, employees, officers, directors and agents for all reasonable costs, including legal and accounting fees, incurred by us arising from any third party claims, actions or demands, including without limitation, claims by End Users, actions or demands alleging or resulting in your breach of the terms of this Agreement, End User or other user content or other material you provide to us, the use of your username or details and your use of our content. We shall provide notice to you promptly of any claim, suit, or proceeding. You shall cooperate as fully as reasonably required in the defense of any claim. We reserve the right, at our own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you and you shall not in any event settle any matter without our written consent.

## **13. Notice and Opportunity to Cure**

It shall be a condition precedent to either Party's right to terminate this Agreement for Cause that (i) the Party seeking termination shall first have given the other Party written notice stating with specificity the reason for the termination ("breach") and (ii) if such breach is susceptible of cure or remedy, a period of thirty (30) days from and after the giving of such notice shall have elapsed without the breaching Party having effectively cured or remedied such breach during such 30-day period, unless such breach cannot be cured or remedied within thirty (30) days, in which case the period for remedy or cure shall be extended for a reasonable time (not to exceed an additional thirty (30) days) provided the breaching Party has made and continues to make a diligent effort to effect such remedy or cure.

## **14. Governing Law**

This Agreement is governed by the laws of the State of Delaware, without regard to any conflict of laws rules thereof. You acknowledge and agree that you hereby waive the application of the laws of any other jurisdiction to the Agreement or the subject matter of your relationship with MedTrainer, including any rights you may have under such laws and discharge any

obligations that may apply to MedTrainer under any such laws, irrespective of your billing or shipping address or the location(s) where you access the Sites or Services.

Subject to Section 10, you and MedTrainer agree to submit any dispute arising under or in connection with the use of the Services to the state and federal courts sitting in the Clark County, Nevada and hereby agree to submit to the exclusive jurisdiction thereof.

## 15. Arbitration

You and MedTrainer agree that any disputes regarding this Agreement, including threshold questions of arbitrability, will be determined through binding individual arbitration on the following terms, namely:

15.1 Any controversy or claim arising out of or relating to this Agreement or relating to the Services, and/or disputes regarding the interpretation, enforceability, or validity of this Agreement, including threshold questions of arbitrability must be resolved by final and binding arbitration before and administered by JAMS in Clark County, Nevada, which arbitration will, except as specifically stated in this Section 14, be conducted in accordance with and pursuant to its Streamlined Arbitration Rules and Procedures (the “**JAMS Rules**”) then in effect; provided that, the arbitration provisions of this Section 14 will govern over any conflicting rules which may now or in the future be contained in the JAMS Rules. The demand for arbitration shall be made by any party hereto within a reasonable time after the claim, dispute or other matter in question has arisen, and in any event shall not be made after the date when institution of legal proceeding, based on such claim, dispute or other matter in question, would be barred by the applicable statute of limitations under the Governing Law provision in Section 13. The law applicable to the validity of the arbitration clause, the enforcement of any award and any other question of arbitration law or procedure shall be the Federal Arbitration Act, 9 U.S.C.A. The final decision of the arbitrator will constitute a conclusive determination of the issue in question and will be binding on each of the parties.

15.2 Any such arbitration will be conducted before a single arbitrator who will be compensated for his or her services at a rate to be determined by the mutual agreement of MedTrainer and Customer, but based upon reasonable hourly or daily consulting rates for the arbitrator in the event the parties are not able to agree upon the arbitrator’s rate of compensation. MedTrainer and Customer shall each pay half the fees and costs of the arbitrator but the prevailing party may request that the arbitrator award reimbursement of all or a portion of such fees and costs from the non-prevailing party in accordance with the provisions set forth below. MedTrainer and Customer will select the arbitrator by mutual agreement promptly following initiation of arbitration in accordance with the JAMS Rules; provided, that in the event the parties are unable to reach agreement within 30 days of initiation, MedTrainer and Customer will each select one arbitrator from a list provided by JAMS (the “**JAMS List**”) and the two arbitrators so selected will select a third arbitrator, which arbitrator will be the sole arbitrator for the purpose of resolving the dispute; provided further that, in the event the two arbitrators are unable to reach agreement on the third arbitrator within 45 days of initiation, then JAMS will have the authority to select an arbitrator from the JAMS List. Each arbitrator selected above will be qualified by training and experience for the matters under dispute.

15.3 The arbitrator chosen in accordance with these provisions will not have the power to alter, amend, or otherwise affect the terms of these arbitration provisions or the provisions of this Agreement or the authority to change, extend, modify, or suspend any of the terms of this Agreement, or to grant an award or remedy any greater than that which would be available from a court under the statutory or common law theory asserted. In addition, either party may seek, from a court of competent jurisdiction in Clark County, Nevada, any provisional remedies or injunctive relief in support of their respective rights and remedies hereunder without waiving any right to arbitration. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

15.4 You hereby waive, on behalf of yourself and your End Users, any right to pursue legal relief on a classwide or representative basis, including in any class arbitration.

## 16. General

16.1 Assignment. We may transfer, assign, sub-contract or otherwise deal with our rights and/or obligations under this Agreement. You may not transfer or assign this Agreement or your obligations thereunder.

16.2 Severability. If a provision of this Agreement is determined by any court or other competent authority to be unlawful and/or unenforceable, the other provisions will continue in effect. If any unlawful and/or unenforceable provision would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the provision will continue in effect.

### 16.3 Notices and Communications.

16.3.1 We will endeavor to communicate with you through a means of your choice and in a way that is effective and efficient. Such methods may include, but are not limited to, MMS and SMS texting, autodialing, e-mail, facsimile transmission, and other means not listed herein. You are responsible for the costs of any such communications.

16.3.2 Any notices regarding this Agreement and the End User Terms may be made to the e-mail address(es) provided by you on your Proposal or within your administrative account on the Services. Alternatively, we may give you notice by certified mail, postage prepaid and return receipt requested, to the address you provide to us.

16.3.3 Except as explicitly stated otherwise, any notices to MedTrainer under this Agreement must be given by e-mail to us at [legal@medtrainer.com](mailto:legal@medtrainer.com).

16.4 Interpretation. Any obligation in this Agreement on a party not to do something includes an obligation not to agree or allow that thing to be done. Any words following the terms “including,” “include,” “in particular,” “for example”, “such as” or any similar expression are illustrative, non-exhaustive and do not limit the sense of the words, description, definition, phrase or term preceding those terms. A reference to writing or written includes e-mail.

16.5 Entire Agreement. This Agreement sets forth the entire understanding and agreement between us and you with respect to the subject matter hereof. Our failure to act with respect to a breach by you or others does not waive our right to act with respect to subsequent or similar breaches and shall not constitute a waiver of said breach. You acknowledge that transmissions to and from the Services are not confidential and your communications may be read or intercepted by others. You acknowledge that by submitting communications to us, no confidential, fiduciary, contractually implied or any other relationship is created between you and us other than pursuant to this Agreement between you and us.

16.6 Information and Press Releases. The Services may contain information and press releases about us. While this information was believed to be accurate as of the date prepared, we disclaim any duty or obligation to update this information or any press releases. Information about companies other than us or our affiliates contained in the press release or otherwise, should not be relied upon as being provided or endorsed by us.