



WebExercises, Inc.
Terms of Use Agreement
(Updated March 2006)

This WebExercises, Inc. Terms of Use Agreement provides important information about your WEBEXERCISES account, so you should take the time to read and understand it. As used herein, "WEBEXERCISES" shall mean and include WebExercises™, WebExercises, Inc., WebExercises, webexercises.com and, where applicable, WebExercises Rehabilitation System™.

WEBEXERCISES reserves the right to modify, change, add or remove any part of this Agreement, or any part of the WEBEXERCISES services and features, including price, at any time. If it does so, WEBEXERCISES will post such changes on the webexercise.com site. Please review the Terms of Use Agreement from time to time so you will be apprised of any changes.

IMPORTANT: If you choose to accept this Agreement, you must do so as it is presented to you – no changes (additions or deletions) will be accepted by WEBEXERCISES. If any future changes are unacceptable to you, you should discontinue using WEBEXERCISES. Your continued use of WEBEXERCISES now, or following the posting of any such changes, will indicate your acceptance of this Agreement, and of any such changes.

DEFINED TERMS.

The following are defined terms as used herein:

1. "Services" include access to WebExercises Content for the purpose of guidance and clarification for rehabilitative prescriptions.
2. "Fee Based Service" refers to fees paid by healthcare providers of subscribing organizations in order to access WebExercises Content.
3. "Printed Materials" includes and is not limited to subscribing organization exercise prescription handouts and copies of exercise lists provided to subscribing organizations.
4. "WebExercises Content" includes and is not limited to information, programming code, software, photos, video, text, graphics, music, sounds, questions, creative suggestions, messages, comments, feedback, ideas, notes, drawings, articles and other materials that are protected by © copyrights, patents, trademarks, trade secrets and/or other proprietary rights, and that these rights are valid and protected in all forms, media and technologies existing now or hereafter developed.
5. "Your" and "You", whether capitalized or not, includes a subscribing individual, group, company or entity and their employees, agents, officers, directors, stockholders and representatives.
6. "We" and "Us" includes WEBEXERCISES, WebExercises™, WebExercises, Inc., WebExercises, webexercises.com and, where applicable, WebExercises Rehabilitation System™
7. "End User" includes all patients and/or clients under the direct supervision of a licensed physician, chiropractor, physical therapist, certified athletic trainer, or other subscribing individual, group, company or entity.

ELECTRONIC SIGNATURE AND AGREEMENT EFFECTIVE DATE.

The Terms of Use Agreement will not be "signed" in the sense of a traditional paper document. To verify the contents of this document, the signatory must enter any combination of alpha/numeric characters that has been specifically adopted to serve the function of the signature, preceded and followed by the forward slash (/) symbol. An acceptable "signature" is: /john smith/.

By clicking "I Agree", you AGREE that you have read the End User License Agreement set out below and AGREE to be bound by all of its terms and conditions. The effective date of this Agreement shall be the date of acceptance by you of this Agreement as evidence by entering your electronic signature and clicking the "I Agree" button herein, or the date you actually use the Services, whichever occurs first.

If you DO NOT AGREE with any provision contained in the End User License Agreement, do not click "AGREE" and you will not be permitted to access the WebExercises Content.

END USER LICENSE AGREEMENT

LICENSE GRANT.

Subject to the terms of this Agreement, WEBEXERCISES grants User a nonexclusive, nontransferable license to access and use the WebExercises Content and Services for internal business purposes only, without the right to sublicense such rights, provided User unconditionally agrees to access and use the WebExercises Content and Services in accordance with this Agreement ("License"). Under the License, User may print out, or otherwise make, printed copies ("Copies") of the exercise print pages, and other information or materials generated from User's access and use of the WebExercises Content and Services for internal business purposes only. Any updates, modifications, enhancements or new versions of the WebExercises Content and Services provided or made available to User by WEBEXERCISES, in accordance with this Agreement, shall be considered WebExercises Content and Services subject to this Agreement. WEBEXERCISES may at any time and for any reason elect to modify, discontinue, delete or restrict any aspect or feature of the WebExercises Content and Services without notice to User or any liability to WEBEXERCISES or any WEBEXERCISES Party; however, WEBEXERCISES agrees to make commercially reasonable efforts to provide User with prior notice of any such changes.

You may not use, or permit others to use, the WebExercises Content except under the terms expressly listed above. Without limiting the previous sentence, you shall not, and shall not permit anyone else to: (a) modify, translate, reverse engineer, decompile, disassemble (except to the extent that this restriction is expressly prohibited by law) or create derivative works based upon the WebExercises Content; (c) copy the WebExercises Content (except as permitted above); (d) rent, lease, sell, offer to sell, distribute, or otherwise transfer rights to the WebExercises Content; (e) develop, sell or distribute applications that integrate with the WebExercises Content or otherwise make use of the data; or (f) remove any proprietary notices or labels on or relating to the WebExercises Content.

In addition, you must satisfy such computer and device requirements as we may specify to operate the database. We reserve the right to change those requirements, and the method by which you may obtain the WebExercises Content, from time to time.

All right, title and interest in and to the WebExercises Content (including without limitation all intellectual property rights) shall remain in us and/or our licensors. Without limiting the foregoing, the WebExercises Content is protected by the copyright law of the United States and international copyright treaties, as well as other proprietary rights.

DISCLAIMER.

WEBEXERCISES makes no warranties or guarantees that the information contained herein is accurate or complete, and is not responsible for any errors or omissions therein, or for the results obtained from the use of such information. The information contained herein is not intended in any way to be used as medical advice or to replace medical advice offered by You or other health care professionals familiar with End User's condition. Use of this information is to be used solely in conjunction with medical advice offered by a licensed physician, chiropractor, physical therapist, certified athletic trainer, or other appropriately certified professional's physical rehabilitation recommendations. WEBEXERCISES will not be liable for any direct, indirect, consequential, special, exemplary, or other damages arising therefrom. The methods of treatment may change as new information is available, and the information in provided by WEBEXERCISES does not necessarily represent the most current practices or methods in physical rehabilitation.

HEALTH DISCLAIMER.

WEBEXERCISES and our Services provide guidance and clarification for rehabilitation prescriptions over the Internet and are intended only to assist a licensed physician, chiropractor, physical therapist, certified athletic trainer, or other appropriately certified professional's physical rehabilitation recommendation efforts. WEBEXERCISES is not a medical organization and cannot give You or End User's medical advice or diagnosis conditions. The information and reports generated by Us are generated and provided to End User on Your behalf. If End User experiences any pain or exacerbation or has a change in medical condition, they should immediately seek appropriate medical attention.

LIMITATION OF LIABILITY.

You expressly understand and agree that WEBEXERCISES shall not be liable for any direct, indirect, incidental, special, consequential, exemplary or punitive damages, or any other damages whatsoever, including but not limited to, damages for loss of profits, goodwill, use, data or other intangible losses (even if we have been advised of the possibility of such damages), arising out of, or resulting from, (a) the use or the inability to use this website (including, without limitation, the fee-based products); (b) the use of any WebExercises Content or other material (including, without limitation, the fee-based products) on this website or any website or websites linked to this website, (c) the cost of procurement of substitute goods and services resulting from any goods, data, information or services purchased or obtained or messages received or transactions entered into through or from this website (including, without limitation, the fee-based products); (d) unauthorized access to or alteration of your transmissions or data; (e) statements or conduct of any third party on our

website (including, without limitation, the fee-based products); or (f) any other matter relating to this website. In no event shall our total liability to you for all damages, losses, and causes of action (whether in contract, tort (including, but not limited to, negligence), or otherwise) exceed the amount paid by you, if any, for accessing this website. If you are dissatisfied with any portion of our website, or with any provision of this agreement, your sole and exclusive remedy is the discontinuation of your use of this website.

REGISTERED AND LICENSED USERS.

In order for User to access and use the WebExercises Content and Services, User shall register with WEBEXERCISES, provide WEBEXERCISES with an email address, pay the license fee ("Fee") and obtain a unique password for accessing the WebExercises Content and Services ("Password"). The Fee shall be determined at the time of registration based on the Subscription type (pre-paid or monthly membership) and number of licensed users of the WebExercises Content and Services. WEBEXERCISES and User acknowledge and agree that WEBEXERCISES may obtain email addresses from Licensed Users upon their accessing and using the WebExercises Content and Services. User is responsible and wholly liable for all acts or omissions committed under User's Password and any and all passwords issued by User to Licensed Users.

DATA.

User agrees that WEBEXERCISES, including any individual or entity contracted for maintenance, development or any other service required for operation of WEBEXERCISES, is permitted to access any information or data User inputs or provides while accessing or using the WebExercises Content and Services ("Data") and any reports or numeric results, and prior to User's submission of Data, reports and numeric results, for the sole purpose of ensuring proper access and use of the WebExercises Content and Services by User in accordance with this Agreement and to maintain and troubleshoot WebExercises Content and Services. Subject to the terms and conditions of this Agreement, WEBEXERCISES shall store and otherwise maintain Data, reports and numeric results, and WEBEXERCISES shall follow the same archival procedures for User's Data, reports and numeric results as WEBEXERCISES employs for its own data, as modified from time to time in WEBEXERCISES discretion. In the event of any loss or damage to User's Data, reports or numeric results, User's sole and exclusive remedy shall be for WEBEXERCISES to use commercially reasonable efforts to replace or restore the lost or damaged data from the latest backup of such Data, reports or numeric results which WEBEXERCISES has maintained in accordance with its standard archival procedures.

HARDWARE AND SERVICE REQUIREMENTS.

User is solely responsible for acquiring, servicing, maintaining, and updating all equipment, computers, software and communications services (such as long distance phone charges) not owned or operated by or on behalf of WEBEXERCISES, that allow User to access and use the WebExercises Content and Services, and for all expenses relating thereto (plus any applicable taxes). User agrees to access and use the WebExercises Content and Services in accordance with any and all operating instructions or procedures that may be issued by WEBEXERCISES, and amended by WEBEXERCISES from time to time. WEBEXERCISES and the WEBEXERCISES Parties do not make any commitments with respect to use or performance of the WebExercises Content and Services with browsers other Internet Explorer 6.0 or higher, FireFox 1.5 or higher, or Safari 2 for Apple Macintosh OS.

PERFORMANCE.

User understands and agrees that the operation and availability of the systems used for accessing and interacting with the WebExercises Content and Services, including, the public telephone, computer networks and the Internet or to transmit information, whether or not supplied by User or WEBEXERCISES, can be unpredictable and may, from time to time, interfere with or prevent the access to and/or the use or operation of the WebExercises Content and Services. WEBEXERCISES and the WEBEXERCISES Parties are not in any way responsible for any such interference with or prevention of User's access and/or use of the WebExercises Content and Services.

ACCESS.

In order to use the Services, users must have access to the World Wide Web and must navigate the Internet to <http://www.webexercises.com> or any other URLs associated with WEBEXERCISES.

ACCOUNT USER AND PASSWORD.

If you are a registered user or subscriber of this Website, you are entirely responsible for maintaining the confidentiality of your password and user account information. You must notify us immediately in the event of any known or suspected unauthorized use of your user account, or any known or suspected breach of security, including loss, theft, or unauthorized disclosure of your or anyone else's password. You are entirely responsible for any and all activities that occur under your user account. You agree to be financially responsible for all usage or activity of Fee-Based Services subscribed to by you. You also agree to immediately notify us of any other unauthorized use of your user account or any other breach of security known to you.

You agree not to assign, transfer or sublicense your rights as a registered user of, or subscriber to, the Fee-Based Services of this Website.

RESTRICTION ON USE OF MATERIALS.

All WebExercises Content is copyrighted under the United States copyright laws (and, if applicable, similar foreign laws), and WEBEXERCISES owns a copyright in the selection, coordination, arrangement and enhancement of such Content. All trademarks appearing in the Printed Materials and on this Website are trademarks of their respective owners. WebExercises™ and WebExercises Rehabilitation System™ are trade names and the registered trademark and service mark of WEBEXERCISES. You may not modify, publish, transmit, distribute, perform, participate in the transfer or sale, create derivative works of, or in any way exploit, any of the WebExercises Content, in whole or in part. When WebExercises Content is received by you in printed form or downloaded to your computer, you do not obtain any ownership interest in such Content. Modification of the WebExercises Content or use of the WebExercises Content for any other purpose, including, but not limited to, use of any WebExercises Content in printed form or on any other website or networked computer environment is strictly prohibited unless you receive WEBEXERCISES prior written consent. Failure to abide by these terms is a breach of copyright and legal remedy may be sought under copyright, trademark, patent and intellectual property law.

PRIVACY.

Your privacy is important to us. All personal information that we have about you (including email addresses and credit card details) is kept on a secure database that is not accessible directly from the Internet. Your personal details will NEVER be supplied to any third party, unless required by law, without your prior, written consent. To find out what WEBEXERCISES does to protect your personal information, please read our Privacy Policy at <http://www.webexercises.com/privacy.htm>.

INDEMNIFICATION.

You agree to indemnify, hold harmless and, at our option, defend us and our affiliates, and our and their officers, directors, employees, stockholders, agents and representatives from any and all third party claims, liability, damages and/or costs (including, but not limited to, reasonable attorneys fees and expenses) arising from, or in any way connected to, your use of this Website or our products or offerings (including, without limitation, the Fee-Based Products), your violation of this Agreement, or your infringement, or the infringement or use by any other user of your account, of any intellectual property or other right of any person or entity.

FORCE MAJEURE.

WEBEXERCISES shall not be liable for delay or failure in performance of any of the acts required by this Agreement when such delay or failure arises from circumstances beyond the reasonable control and without the gross negligence or willful misconduct of you or WEBEXERCISES, respectively. Such causes may include, without limitation, acts of God, acts of government in its sovereign or contractual capacity, acts of public enemy, acts of civil or military authority, war, riots, civil strife, terrorism, blockades, sabotage, rationing, embargoes, epidemics, earthquakes, fire, flood, quarantine restrictions, power shortages or failures, utility or communication failure or delays, labor disputes, strikes, or shortages, supply shortages, equipment failures, or WebExercises Content malfunctions. The time for performance of any act delayed by such events may be postponed for a period equal to the period of the delay.

COPYRIGHT COMPLAINTS.

We respect the intellectual property of others, and we ask our users to do the same. We may, in appropriate circumstances and in our sole discretion, terminate the rights of any user to use our Website (or any part thereof) who infringe the intellectual property rights of others. If you believe that your work has been copied in a way that constitutes copyright infringement or are aware of someone doing so, please contact us for notice of claims of copyright infringement: WebExercises, Inc., 336 Bon Air Center, Box 470, Greenbrae, CA 94904.

ELIGIBLE SUBSCRIBERS.

You must be at least 18 years of age to assume the responsibilities of this Agreement. Minors may use the WEBEXERCISES service only if one of their parents or legal guardians assumes the responsibilities of this Agreement and thereby assumes full responsibility for the minor's use of the WEBEXERCISES service.

SUBSCRIPTION FEES AND SERVICE COMMITMENT.

You agree to pay your subscription fee in advance. Your subscription fee will cover the access to WEBEXERCISES. You have a choice of subscription payment options that may change over time. WEBEXERCISES reserves the right to discontinue any subscription payment option at any time without notice. You may switch payment options at the end of each period. If for any reason you need to reactivate your subscription, you may be charged a reactivation fee. If you are

signing up for the WEBEXERCISES service under a promotional subscription fee, some additional restrictions may apply. If you have multiple WEBEXERCISES service subscriptions under the same account information, additional terms and conditions may apply. Whatever Your subscription payment option, Your subscription fee does not include any services, features or functionality other than the WEBEXERCISES service. No invoice or receipt will be provided to You for this electronic authorization. If You do not notify WEBEXERCISES of any discrepancies within thirty (30) days after they first appear on any statement, You will be considered to have accepted the amounts charged. You release WEBEXERCISES from any and all liability and claims resulting from any error or discrepancy that is not reported to WEBEXERCISES within that thirty (30) day notice period.

SETUP AND CUSTOMIZATION.

WEBEXERCISES will create any necessary login pages and passwords for Subscriber Administrator, but Subscriber will be responsible for the registration of its End Users. During the term hereof, Subscriber shall be permitted to enroll as many End Users as identified on the Subscription Agreement and/or establish as many concurrent connections as identified on the Subscription Agreement.

PRE-PAID SUBSCRIPTIONS.

If you have purchased a pre-paid subscription with a fixed term, you will receive the Service for the duration of your subscription term without further charges from WEBEXERCISES. At the end of your subscription term, your subscription will automatically renew as a monthly billing subscription. Pricing will be subject to the rates in effect at that time for equivalent service. If you have accepted a trial offer for a specific number of days, you will incur the monthly charge if you continue to use the Service after the trial time period. If you terminate your subscription before the end of the fixed term or if WEBEXERCISES terminates your subscription for violations of this Agreement or any of the applicable user policies, and you have paid WEBEXERCISES in advance for subscription services, the amount you have paid for your subscription will not be refunded in whole or in part.

MONTHLY BILLING SUBSCRIPTIONS.

If you have subscribed to the Service on a monthly basis, you agree to pay to WEBEXERCISES a monthly fee (the "Monthly Fee") in advance, billed monthly, for each month in which you receive the Service. THIS REQUIRES A 1 YEAR SUBSCRIPTION AGREEMENT. IF YOU CHOOSE TO CANCEL YOUR SUBSCRIPTION PRIOR TO ONE (1) YEAR, YOU WILL BE SUBJECT TO AN EARLY CANCELLATION FEE OF \$250.00. You authorize WEBEXERCISES to charge your account immediately upon activation of your subscription. For billing purposes, the month will begin on the date you become a subscriber, which may not be the first calendar day of the month. Subscribers who join on the 29th, 30th or 31st day of any month shall be billed on the last day of any month not containing 29, 30 or 31 days. WEBEXERCISES will have the right to increase the Monthly Fee from time to time upon email notification to you at least one month before the effective date of the increase. If you do not cancel your subscription before the end of the notice period, you will be deemed to have agreed to such increase. WEBEXERCISES may change its monthly billing cycle from time to time. If you have accepted a trial offer for a specific number of days, you will incur WEBEXERCISES standard monthly charges if you continue to use the Service after the trial period. If you terminate your use of the Service within the trial period, WEBEXERCISES will not charge you. All fees and charges are stated and payable in U.S. Dollars.

PAYMENT AUTHORIZATION.

If you choose a subscription option with recurring payments (including any pre-paid subscription option which reverts to a monthly payment plan at the expiration of the pre-paid period), you agree that WEBEXERCISES may automatically charge the subscription fee to your credit or charge card at the beginning of each period. Your WEBEXERCISES service access will not be established until WEBEXERCISES has verified that the credit card information you provide us for payment is accurate and that your credit card account is in good standing. You further agree that WEBEXERCISES may charge any other applicable fees, including any early termination fee, to your credit card. WEBEXERCISES may, as necessary, extend the expiration date of your credit card in order to ensure continued service. WEBEXERCISES may, at its discretion, change the WEBEXERCISES service fees, early termination fee, restocking fee and any other fee, from time to time, and charge fees (which WEBEXERCISES may also change) for features and functionalities that are not a part of the WEBEXERCISES service. WEBEXERCISES will notify you 30 days in advance of any fee changes or new fees applicable to your WEBEXERCISES service subscription; you may obtain the fees currently in effect at any time by contacting WEBEXERCISES Customer Support at 1-415-464-9900. WEBEXERCISES reserves the right to suspend or terminate your WEBEXERCISES service without notice upon rejection of any credit card charges or if your card issuer (or its agent or affiliate) seeks return of payments previously made to WEBEXERCISES when WEBEXERCISES believes you are liable for the charges. You agree to pay a late charge on all amounts due which remain unpaid for 30 days. The late charge will equal 1.5% of the past due amount, or the highest rate allowed by law, whichever is less, per month until paid. Such rights are in addition to and not in lieu of any other legal right or remedies available to WEBEXERCISES. WEBEXERCISES reserves the right to refer your account to a third party for collection in the event of an ongoing default.

WEBEXERCISES is entitled to recover any sums expended in connection with the collection of undisputed sums not paid when due, including reasonable attorneys' fees.

TERMINATION OF SERVICE.

Subject to any Service Commitment to which you may be bound, you may terminate your account, this Agreement, and your right to use the WEBEXERCISES service, at any time and for any reason or no reason, by contacting WEBEXERCISES Customer Support at 1-415-464-9900. The WEBEXERCISES service will be terminated within 24 hours after your call and unused subscription fees are nonrefundable. Notwithstanding anything to the contrary in this Agreement, WEBEXERCISES retains the absolute right to immediately suspend or terminate your account, and terminate this Agreement, if the charges to your credit card for the fees described in "Subscription Fees and Service Commitment" and "Payment Authorization" are refused for any reason, if you breach any provision in this Agreement, if you misuse the WEBEXERCISES service, and/or if you use the WEBEXERCISES service or WebExercises Content in such a manner as to infringe upon the intellectual property rights of WEBEXERCISES or any third party. In addition, WEBEXERCISES reserves the right to terminate your account and this Agreement for any other reason or no reason if WEBEXERCISES gives you at least 30 days advance notice of such termination. Upon any such termination of your account, you will remain obligated to pay all outstanding fees and charges relating to your use of the WEBEXERCISES service before termination.

SHOPPING THROUGH WEBEXERCISES.

When you purchase a product from a third party merchant, you are buying directly from that merchant and not from WEBEXERCISES. WEBEXERCISES is not responsible for the actions or omissions of a merchant, any advertising claims made by the merchant, or any damage or harm that may result from your use of products purchased from the merchant. All aspects of your purchase, including, but not limited to, purchase terms, payment terms, warranties, guarantees, maintenance, service, and delivery, are solely between you and the merchant. Your rights and remedies with respect to a particular purchase will be solely against the merchant, and any questions, complaints, and claims related to a product should be directed to that merchant. If you have any concerns about sending credit card information over the Internet, please use an alternative means of payment. By sending any sensitive information, such as credit card information, over the Internet while you are shopping with the third party, you agree that WEBEXERCISES will not have any liability if the encryption technology fails to protect your information.

SUBMISSION OF IDEAS.

WEBEXERCISES is always improving its Services and Products and developing new features. If you have ideas regarding improvements or additions to WEBEXERCISES, we would like to hear them -- but any submission will be subject to these Terms and Conditions. UNDER NO CIRCUMSTANCES SHALL ANY DISCLOSURE OF ANY IDEA OR RELATED MATERIALS TO WEBEXERCISES BE SUBJECT TO ANY OBLIGATION OF CONFIDENTIALITY OR EXPECTATION OF COMPENSATION. BY SUBMITTING THE IDEA AND/OR ANY RELATED MATERIAL TO WEBEXERCISES, YOU ARE WAIVING ANY AND ALL RIGHTS THAT YOU MAY HAVE IN THE IDEA OR ANY RELATED MATERIALS AND ARE REPRESENTING AND WARRANTING TO WEBEXERCISES THAT THE IDEA AND/OR RELATED MATERIALS ARE WHOLLY ORIGINAL WITH YOU, THAT NO ONE ELSE HAS ANY RIGHTS IN THE IDEA AND/OR MATERIALS AND THAT WEBEXERCISES IS FREE TO IMPLEMENT THE IDEA AND TO USE THE MATERIALS IF IT SO DESIRES, AS PROVIDED OR AS MODIFIED BY WEBEXERCISES, WITHOUT OBTAINING PERMISSION OR LICENSE FROM ANY THIRD PARTY.

CUSTOMER SERVICE SUPPORT AND TRAINING.

Unless User and WEBEXERCISES enter into a separate agreement, WEBEXERCISES will not provide any training or on-site support to User relating to the WebExercises Content and Services. WEBEXERCISES will provide User with (a) commercially reasonable telephone and email support for the WebExercises Content and Services during normal business hours; and (b) updates and enhancements for the WebExercises Content and Services, to the extent that WEBEXERCISES generally makes such updates and enhancements available to Users without a separate charge. WEBEXERCISES will provide email only support to End Users outside the U.S. and Canada, and all support will be provided in the English. Customer support will address basic issues related to use of the WebExercises Content (i.e., registration, navigation, and configuration), but will not include issues with respect to any End Users' own internet connectivity issues or computer hardware issues. WEBEXERCISES may conduct maintenance of the WEBEXERCISES hosted WebExercises Content sites, which will normally be performed during non business days. During that scheduled maintenance time, the Service and the WebExercises Content will not be available for use by Customer or its End Users.