

CareEntrust Terms of Use

Effective Date: 08/13/2007

This User Agreement ("Agreement") is entered into by and between Healthe Mid-America, Inc. (DBA "CareEntrust") and you, the user ("you," "your," or "User"), which shall include anyone who registers an account for, uses, or otherwise accesses the CareEntrust URLs, CareEntrust Content, or Services (as defined below). In the event that User purports to be the agent of, represent, or otherwise act on behalf of an entity or any other person, User shall include such entity or person in addition to such representative. This Agreement governs your use of the services provided by CareEntrust (collectively, the "Services"), which shall include, without limitation, the CareEntrust URLs (as defined below), the related information, data, and other content provided by CareEntrust on those CareEntrust URLs (the "CareEntrust Content"), and the services provided thereon, including access to the CareEntrust Content and the User Content (as defined below). The Services will be accessed on the World Wide Web through various Uniform Resource Locators, either currently or hereafter in use by CareEntrust (the "CareEntrust URLs"). "User Content" shall mean the medical and other information, data, and other content regarding patients that may be accessed, modified, uploaded, transferred or otherwise provided to CareEntrust by User through User's use of the Services (collectively, the "User Content").

BY CLICKING THE ACCEPTANCE BUTTON, REGISTERING AN ACCOUNT FOR, LOGGING INTO AN ACCOUNT, USING, OR OTHERWISE ACCESSING ANY PART OF THE SERVICES, OR BY MANIFESTING YOUR ASSENT TO THESE TERMS IN ANY OTHER MANNER, USER EXPRESSLY AGREES TO AND CONSENTS TO BE BOUND BY ALL OF THE TERMS OF THIS AGREEMENT. IN THE EVENT THAT USER IS THE PARENT OR GUARDIAN OF A MINOR CHILD, CHILDREN AND/OR OTHER DEPENDENTS THAT HAVE BEEN GRANTED USERNAME(S) AND PASSWORD(S) TO ACCESS THE SERVICES, BY CLICKING THE ACCEPTANCE BUTTON, USER HEREBY EXPRESSLY AGREES TO AND CONSENTS TO BE BOUND BY ALL THE TERMS OF THIS AGREEMENT ON BEHALF OF SUCH MINOR CHILD, CHILDREN, AND/OR DEPENDENTS. IF USER DOES NOT AGREE TO ALL OF THE TERMS OF THIS AGREEMENT, USER MUST SELECT THE BUTTON INDICATING NON-ACCEPTANCE AND REFRAIN FROM REGISTERING AN ACCOUNT FOR, LOGGING INTO AN ACCOUNT, USING, OR OTHERWISE ACCESSING ANY PART OF THE SERVICES.

1. Agreement with CareEntrust. CareEntrust hereby grants you a limited, non-exclusive, non-assignable, and non-transferable license to access and use the Services for the personal use or internal business purposes of User, as the case may be, provided and expressly conditioned on your agreement and satisfaction of the terms and conditions in this Agreement. This license may be revoked by CareEntrust in whole or in part, at any time, with or without cause. User's access to the foregoing is licensed and not sold. User agrees not to use the Services for service bureau, time-sharing, or other similar purposes. Any modification, reverse engineering, reverse compiling, or disassembly of the Services is expressly prohibited.

2. Authorized Users. Certain portions of the Services will be accessible only to Users previously identified to CareEntrust who meet certain criteria established by CareEntrust ("Authorized Users") based on information provided by such Authorized Users or on their behalf, and in CareEntrust's sole and exclusive discretion. You may not access such portions of the Services unless you meet all criteria of an Authorized User, which is subject to modification or change by CareEntrust at any time without notice. You may not permit any other person to access or otherwise use the Services using your user identification number or password. All

information you provide to CareEntrust must be current, accurate, and complete. You are responsible for any acts or omissions relating to your use or misuse of the Services, and for any damages incurred as a result thereof.

3. Protected Health Information; Legal Compliance.

- a. Compliance with Applicable Laws.** You represent and warrant that you will, at all times during the term of this Agreement and thereafter, comply with all laws (including, without limitation, HIPAA and state privacy and security laws) directly or indirectly applicable to you that may now or hereafter govern the gathering, use, transmission, processing, receipt, reporting, disclosure, maintenance, and storage of the CareEntrust and User Content, including, without limitation, confidential patient information, and cause all persons or entities under your direction or control or on whose behalf you are accessing such CareEntrust and User Content to comply with such laws. You are, at all times during the term of this Agreement and thereafter, responsible for obtaining and maintaining all patient consents and all other legally necessary consents or permissions required or advisable to disclose, process, retrieve, transmit, and view the CareEntrust and User Content you transmit, store or receive in connection with the Services. You agree that CareEntrust, its licensors, and all other persons or entities involved in the operation of Services have the right to monitor, retrieve, store and use CareEntrust and User Content in connection with the operation of the Services.
- b. User Responsible for User Actions.** CAREENTRUST CANNOT AND DOES NOT ASSUME ANY RESPONSIBILITY FOR YOUR USE OR MISUSE OF THE SERVICES OR ANY INFORMATION MADE AVAILABLE THEREBY, OR ANY USE OR MISUSE OR THE FOREGOING THAT OCCURS UNDER YOUR ACCOUNT. THE ONLY PERMITTED USE OF THE SERVICES IS FOR TREATMENT, PAYMENT, AND HEALTHCARE OPERATIONS OF COVERED ENTITIES AS DEFINED IN THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996 ("HIPAA"). ANY OTHER USE OF THE SERVICES IS CONSIDERED A VIOLATION OF THE HIPAA PRIVACY REGULATIONS AND THIS AGREEMENT. IN THE EVENT THAT USER IS THE PARENT OR GUARDIAN OF A MINOR CHILD, CHILDREN, OR OTHER DEPENDENTS THAT HAVE BEEN GRANTED USERNAME(S) AND PASSWORD(S) TO ACCESS THE SERVICES, USER HEREBY EXPRESSLY AGREES TO AND CONSENTS TO BE BOUND BY AND RESPONSIBLE FOR ANY ACTIONS TAKEN THROUGH THE USE OF THE SERVICES BY SUCH MINOR CHILD, CHILDREN, AND/OR DEPENDENTS.
- c. Business Associate Agreement.** If, through User's use of the Services, CareEntrust's performance of its responsibilities described in this Agreement causes CareEntrust to act as the "business associate" of the User (as defined in 45 CFR Part 160.103), the provisions of the Business Associate Agreement located at <http://www.careentrust.org/docs/baa/bus-assoc.pdf> shall apply (and are hereby incorporated by reference) in order to implement the requirements imposed under HIPAA for agreements between covered entities and their business associates.

4. Intellectual Property; Proprietary Information

a. Ownership and Use of Intellectual Property.

- i. Intellectual Property Relating to the Services.** The Services are the valuable, exclusive property of CareEntrust or its licensors, licensees, or third-party providers, as the case may be, and include various forms of intellectual property including, without limitation, copyrights, trademarks, and servicemarks and any current and future enhancements, revisions, releases, updates, and derivative works based thereon or therein (the "Intellectual Property"). This Intellectual Property includes, but is not limited to, data, logos, page headers, graphics, buttons, and other icons. Nothing in this Agreement shall be construed as transferring or assigning any ownership rights to you or any other person or entity in any Intellectual Property. CareEntrust hereby reserves any and all rights not expressly granted to User in this Agreement.
- ii. User Content.** As between the parties, User and/or User's respective licensors retain any and all ownership rights relating to the User Content that is posted, uploaded, provided or otherwise transferred to CareEntrust or through User's use of the Services. By posting, revising, uploading, providing or otherwise transferring any User Content to CareEntrust via the Services, or by accessing the Services and viewing the information made available thereby, User hereby grants (or warrants that the owner of such data or information has expressly granted) to CareEntrust a perpetual, royalty-free, irrevocable, worldwide, non-exclusive right and license to use, reproduce, distribute, modify, edit, adapt, publish, translate, create derivative works upon and compilations containing, incorporate, and sublicense such User Content in or into any form, medium, or technology now known or later developed throughout the universe. In addition, User hereby waives (or warrants that the owner of such data or information has expressly waived) any and all "moral rights" in the User Content and CareEntrust Content as to any of the foregoing rights and licenses granted to CareEntrust.
- iii. Use of Intellectual Property.** Except as expressly permitted in this Agreement, you may not copy, reproduce, republish, store, upload, post, transmit, analyze, adapt, reformat, print, distribute, commercially exploit, or publicly display the Services or any portion thereof in any manner whatsoever without prior written consent from CareEntrust. You may not remove, reproduce, alter, use, display, modify, copy, or obscure any copyrighted material, trademark, servicemark, legal, or proprietary notices in or on any portions of the Services or any portion thereof.
- iv. Submissions.**

 1. Any suggestions, ideas, notes, drawings, concepts or other purportedly original or novel conceptions or theories of any kind submitted to CareEntrust (collectively, "Ideas") shall be deemed, and shall remain, the sole and absolute property of CareEntrust. None of the Ideas shall be subject to any obligation of confidence on the part of CareEntrust, and CareEntrust shall not be liable for any use or disclosure of any Ideas. Without limiting the foregoing, CareEntrust shall exclusively own all now known or hereafter existing rights to the Ideas of every kind and nature throughout the

universe and shall be entitled to unrestricted use of the Ideas for any purpose whatsoever, commercial, or otherwise, without compensation to the provider of the Ideas. User represents and warrants that such Ideas do not violate the intellectual property or other rights of any third party, and shall indemnify CareEntrust for any allegation of such a violation.

2. You hereby grant to CareEntrust a worldwide, royalty-free, perpetual, irrevocable, non-exclusive right and license to use, reproduce, modify, adapt, publish, translate, create derivative works from, distribute, perform, and display any message posted in or using the Services, or in any e-mail sent by you to CareEntrust (in whole or in part), and to incorporate it in other works in any form, media, or technology now known or later developed throughout the universe.

b. Proprietary Information

- i. **Scope of Proprietary Information.** User may come into possession of certain Proprietary Information of CareEntrust. For the purposes hereof, "Proprietary Information" means any and all information related to the Services and any part thereof, the User Content, and any and all trade secrets, business plans, marketing plans, know-how, data, contracts, documents, scientific and medical concepts, member and customer lists, costs, financial information, profits and billings, referral sources, existing or future services, products, operations, management, pricing, financial status, goals, strategies, objectives, and agreements of CareEntrust, whether written or verbal, that are confidential in nature; provided, however, that Proprietary Information shall not include any information that:

1. Is in the public domain;
2. Is already known or obtained by User other than through access to the Services or its course of dealings with CareEntrust pursuant to this Agreement;
3. Is independently developed by any other party; and/or
4. Becomes known from an independent source having the right to disclose such information and without similar restrictions as to disclosure and use and without breach of this Agreement or any other confidentiality or nondisclosure agreement by such other party.

- ii. **Nondisclosure of Proprietary Information.** User (1) shall keep and maintain in strict confidence all Proprietary Information received from CareEntrust or from any of its employees, accountants, attorneys, consultants, or other agents and representatives; (2) shall not use, reproduce, distribute, or disclose any such Proprietary Information except as expressly permitted by this Agreement; and (3) shall prevent its employees, accountants, attorneys, consultants, and other agents and representatives from making any such use, reproduction, distribution, or disclosure.

- iii. **Equitable Remedies.** All Proprietary Information represents a unique intellectual product of CareEntrust. The unauthorized disclosure of Proprietary Information would have a detrimental impact on CareEntrust. The damages resulting from such a detrimental impact would be difficult to ascertain but would result in irreparable harm, damage, and loss to CareEntrust. It would require a multiplicity of actions at law and in equity in order to seek redress against User in the event of such an unauthorized disclosure. CareEntrust shall be entitled to equitable relief in preventing such an unauthorized disclosure of Proprietary Information and such equitable relief is in addition to any other rights or remedies available to CareEntrust at law, in equity, or granted under this Agreement.
 - iv. **Required Disclosure.** Notwithstanding any other provision hereof, nothing in this Section 4 shall prohibit or be deemed to prohibit User from disclosing any Proprietary Information (or any other information the disclosure of which is otherwise prohibited hereunder) to the extent that User becomes legally compelled to make such disclosure by reason of a subpoena or order of a court, administrative agency, or other governmental body of competent jurisdiction (“compelled disclosure”); provided, however, that in the event of a compelled disclosure, User shall provide CareEntrust with notice thereof within five (5) calendar days, or, if sooner, at least three (3) business days before such compelled disclosure will be made so that CareEntrust may seek a protective order or other appropriate remedy.
- c. **Notice and Procedure for Infringement and other Certain Claims.** CareEntrust, pursuant to 17 U.S.C. Section 512, as amended by Title II of the Digital Millennium Copyright Act (the “Act”), reserves the right, but not the obligation, to terminate your license to use the Services and any part thereof if it determines in its sole and absolute discretion that you are involved in any activity which may be infringing, including alleged acts of first time or repeat infringement, regardless of whether the material or activity is ultimately determined to be infringing. CareEntrust accommodates and does not interfere with standard technical measures used by copyright owners to protect their materials. In addition, pursuant to 17 U.S.C. Section 512(c), as amended, CareEntrust has implemented procedures for receiving written notification of claimed infringements and for processing such claims in accordance with the Act. CareEntrust’s designated agent to receive notification of claimed infringement is:

Jim Hansen
1100 Walnut, Suite 2980
Kansas City, MO 64106
816-221-7710
JHansen@CareEntrust.org

Any written notice regarding any defamatory or infringing activity, whether of a copyright, patent, trademark or other proprietary right, should be sent to CareEntrust’s designated agent, listed above, and must include the following elements:

- i. A physical or electronic signature of a person authorized to act on behalf of (1) the owner of an exclusive right that is allegedly infringed or (2) the person defamed.
- ii. Identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works at a single online site are covered by a single notification, a representative list of such works at that site. Similarly for other types of infringing materials, a list of such materials.
- iii. Identification of the material that is claimed to be infringing, to be the subject of infringing activity, or to be defamatory and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit us to locate the material.
- iv. Information reasonably sufficient to permit us to contact the complaining party, such as an address, telephone number, and/or electronic mail address.
- v. A statement that the complaining party has a good faith belief that use of the material in the manner complained of is not authorized by the copyright or other proprietary right owner, its agent, or the law, or that such material is defamatory.
- vi. A statement that the information on the notification is accurate, and under penalty of perjury, that the complaining party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed or on behalf of the person defamed.

5. Restrictions On Use of Content and Services.

- a. Legal Restrictions. You agree to use the Services and any CareEntrust or User Content accessed or uploaded through the Services for lawful and permitted purposes only. Without limiting the generality of any other provision of this Agreement, you agree not to post or transmit any information through or otherwise use the Services or any CareEntrust or User Content accessed or uploaded through the Services in any way which (1) infringes the rights of others or violates their privacy or publicity rights, (2) is unlawful, threatening, abusive, defamatory, libelous, vulgar, obscene, profane, indecent, or otherwise objectionable, (3) is protected by copyright, trademark, privacy law, or other proprietary right without the express permission of the owner of such right, (4) will disseminate or otherwise make available any CareEntrust or User Content or other Proprietary Information made available through the Services to third parties other than for purposes expressly permitted under this Agreement. You shall be solely liable for defending against and for any damages resulting from any violation of this Section. You shall indemnify CareEntrust in accordance with Section 10 for any claims or actions brought by third parties who allege that you have violated this Section 5.
- b. No Services to Third Parties. You agree to use the Services only for your own account, and shall not use any part of them to provide separate services or sublicenses to any third party other than for or on behalf of your patients.
- c. No Use for Research or Comparative Studies. You shall not use the Services to aggregate data to compare the performance of other Authorized Users, for

research, or for other comparative purposes without the express written consent of CareEntrust.

6. Revisions to Agreement. CareEntrust reserves the right to modify the terms and conditions of this Agreement, access to, use of, and features of the Services, without prior notice to you. Upon modification of the Agreement, CareEntrust shall endeavor to post notice of such modifications electronically via the Services. You agree to be bound by the terms and conditions of this Agreement as modified. Your continued use of the Services after such revisions is subject to such modified terms and conditions, and you agree that your continued use following such revisions shall constitute your acceptance of such changes. You understand and acknowledge that you have the affirmative obligation, and you hereby agree, to periodically review the Services for revisions to this Agreement. The most current version of this Agreement can be reviewed at <http://www.careentrust.org/docs/eu/end-user.pdf> .

7. Password Disclosure. If, at any time, you learn or suspect that your username or login password has been disclosed or otherwise made known to any person other than yourself, you agree to immediately notify CareEntrust via e-mail or in writing. You represent and warrant that you are solely responsible for, and you hereby accept responsibility for, the security, confidentiality, and integrity of your username and password. You have the affirmative responsibility to monitor and control access to your username and password. You shall be solely responsible for any authorized or unauthorized access and use of your account by any person.

8. Termination. This Agreement shall terminate immediately without notice from CareEntrust if User fails to comply with any provision of this Agreement. CareEntrust may terminate this Agreement for any or no reason upon thirty (30) days notice to User. Notwithstanding the foregoing, CareEntrust may suspend User's access to or use of the Services immediately for any or no reason. You may terminate this Agreement at any time by immediately discontinuing any and all access to the Services and by providing notice to CareEntrust of such discontinuance. Upon termination of this Agreement, all rights granted to you will immediately terminate and revert to CareEntrust, and User shall immediately terminate any and all use of the Services. Termination or cancellation of this Agreement shall not affect any right or relief to which CareEntrust may be entitled, at law or in equity.

9. Monitoring. You acknowledge and agree that CareEntrust may monitor any and all transmissions sent or received through the Services. CareEntrust, at its sole discretion and without further notice to you, may (but is not obligated to) review, censor, or prohibit the transmission or receipt of, or delete or block access to, any material which CareEntrust, in its sole discretion, deems inappropriate, or objectionable or in violation of any term or condition of this Agreement.

10. Disclaimer of Warranties; Limitations of Liability; Indemnity.

- a. Carrier Lines.** User acknowledges that access to the Services is to be provided over various facilities and communications lines, and information will be transmitted over local exchange and Internet backbone carrier lines and through routers, switches, and other devices (collectively, "carrier lines") owned, maintained, and serviced by third-party carriers, utilities, and Internet service providers, all of which are beyond CareEntrust's control. CareEntrust assumes no liability for or relating to the integrity, privacy, security, confidentiality, or use of

any information while it is transmitted on the carrier lines, or any delay, failure, interruption, interception, loss, transmission, or corruption of any data or other information attributable to transmission on the carrier lines. Use of the carrier lines is solely at User's risk and is subject to all applicable local, state, national, and international laws.

- b. Delays or Interruptions in Services.** Neither CareEntrust nor any of its licensors, licensees, nor third-party providers (including their officers, directors, employees, affiliates, agents, representatives or subcontractors) (collectively, the "Service Providers") shall be liable for any loss or liability resulting, directly or indirectly, from the unavailability of the Services. Neither CareEntrust nor its Service Providers shall have any responsibility to provide continuous access to the Services.
- c. No Warranties.** USE OF AND ACCESS TO THE SERVICES AND ANY INFORMATION MADE AVAILABLE THEREBY IS PROVIDED ON AN "AS IS," "WHERE IS," AND "AS AVAILABLE" BASIS, AND CAREENTRUST EXPRESSLY DISCLAIMS TO THE FULLEST EXTENT OF THE LAW ANY AND ALL WARRANTIES OF ANY KIND, EXPRESSED OR IMPLIED, WRITTEN OR VERBAL, STATUTORY OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR APPLICATION, ARISING BY VIRTUE OF CUSTOM OF TRADE OR COURSE OF DEALING, TITLE, NON-INFRINGEMENT, TIMELINESS, ACCURACY, COMPLETENESS, CURRENTNESS, OR ADEQUACY TO PRODUCE ANY PARTICULAR RESULT. USER IS SOLELY RESPONSIBLE FOR ANY AND ALL ACTS OR OMISSIONS TAKEN OR MADE IN RELIANCE ON THE SERVICES AND ANY INFORMATION MADE AVAILABLE THEREBY, INCLUDING INACCURATE, INCOMPLETE, OR OBSOLETE INFORMATION.
- d. LIMITATION ON LIABILITY.** IT IS EXPRESSLY AGREED THAT IN NO EVENT SHALL CAREENTRUST BE LIABLE TO USER OR TO ANY THIRD PERSON FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUES, LOSS OF USE, OR LOSS OF INFORMATION OR DATA, LOSS CAUSED BY TRANSMISSION OR MISTRANSMISSION, OR BY USER'S USE OR INABILITY TO USE, CHANGES TO, INACCESSIBILITY OF, DELAY, FAILURE, UNAUTHORIZED ACCESS TO OR ALTERATION OF THE SERVICES AND ANY INFORMATION MADE AVAILABLE THEREBY, WHETHER A CLAIM FOR ANY SUCH LIABILITY OR DAMAGES IS PREMISED UPON BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER THEORIES OF LIABILITY, AND EVEN IF CAREENTRUST HAS BEEN APPRISED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES OCCURRING. CAREENTRUST DISCLAIMS ANY AND ALL LIABILITY FOR ERRONEOUS TRANSMISSIONS AND LOSS OF SERVICE RESULTING FROM COMMUNICATION FAILURES BY TELECOMMUNICATION OR OTHER SERVICE PROVIDERS. IN NO EVENT SHALL CAREENTRUST'S TOTAL LIABILITY FOR ALL DAMAGES, LOSSES, AND CAUSES OF ACTION (WHETHER IN CONTRACT, TORT OR NEGLIGENCE, INCLUDING WITHOUT LIMITATION, THE NEGLIGENCE OF CAREENTRUST, OR OTHERWISE) ARISING FROM THE USE OF THE SERVICES AND ANY INFORMATION MADE AVAILABLE THEREBY, EXCEED THE ACTUAL DAMAGES INCURRED BY YOU, NOT TO EXCEED \$1,000, EVEN IF CAREENTRUST OR ITS AFFILIATES

HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIABILITY SHALL BE COMPLETE AND EXCLUSIVE REGARDLESS OF WHETHER IT IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE, AND IS AN ESSENTIAL ELEMENT FORMING THE BASIS OF THE BARGAIN BETWEEN THE PARTIES. SOME JURISDICTIONS PROHIBIT THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, THUS THE FOREGOING LIMITATIONS MAY NOT APPLY TO USER.

CAREENTRUST IS NOT AN INSURER WITH REGARD TO THE PERFORMANCE OF THE SERVICES. THE DISCLAIMER OF WARRANTIES AND THE LIMITATIONS OF LIABILITY AND REMEDIES IN THIS AGREEMENT ARE A REFLECTION OF THE RISKS ASSUMED BY THE PARTIES IN ORDER FOR USER TO OBTAIN THE RIGHT TO USE THE SERVICES AT THE SPECIFIED PRICE, IF ANY. USER AGREES TO ASSUME THE RISK FOR: (i) ALL LIABILITIES DISCLAIMED BY CAREENTRUST HEREIN, AND (ii) ALL ALLEGED DAMAGES IN EXCESS OF THE AMOUNT, IF ANY, OF THE LIMITED REMEDY PROVIDED HEREIN.

- e. **Other Users.** User acknowledges that other Authorized Users have access to the Services and any information made available thereby. The actions of such other parties are beyond the control of CareEntrust. Accordingly, CareEntrust does not assume any liability for or relating to any impairment of the privacy, security, confidentiality, integrity, availability, or restricted use of the CareEntrust and User Content or Services resulting from any other Authorized Users' actions or failures to act.
- f. **Unauthorized Access; Lost or Corrupt Data.** CareEntrust is not responsible for unauthorized access to the User's transmission facilities or equipment by individuals or entities accessing the Services or for unauthorized access to, or alteration, theft, or destruction of the User's data files, programs, procedures, or information through the CareEntrust system, whether by accident, fraudulent means or devices, or any other method. User is solely responsible for validating the accuracy of all output and reports and protecting the User's data and programs from loss by implementing appropriate security measures, including routine backup procedures. User waives any damages occasioned by lost or corrupt data, incorrect reports, or incorrect data files resulting from programming error, operator error, equipment or software malfunction, security violations, or the use of third-party software. CareEntrust is not responsible for the content of any information transmitted or received through CareEntrust's provision of the Services.
- g. **Inaccurate Data.** All User Content originates from Users, including, without limitation, data providers and other parties, that are beyond the control of CareEntrust. All such User Content is subject to change arising from numerous factors including, without limitation, changes to patient health information made at the request of the patient, changes in the patient's health condition, the passage of time, and other factors. CareEntrust neither initiates the transmission of any User Content nor monitors the specific content or accuracy of the User Content being transmitted. Without limiting the generality of any other provision of this Agreement, CareEntrust shall have no responsibility for or liability related to the accuracy, content, currency, completeness, or delivery of the User Content provided by any party or used by User. To the extent User provides User

Content to CareEntrust or via the Services, or amends the User Content by adding, supplementing or changing such User Content, User warrants that such information is accurate and complete, that such User is solely responsible for the accuracy and completeness of such information, and that User shall indemnify CareEntrust for any and all losses CareEntrust may incur regarding or related to the accuracy or completeness of the User Content which User provides pursuant to the indemnification provisions of this Agreement. To the extent User feels that User Content about such User is inaccurate, CareEntrust agrees in certain circumstances and at CareEntrust's sole discretion, unless otherwise required by law, to provide limited assistance to User in contacting the party responsible for providing such inaccurate User Content upon notification of such inaccuracy from User. Notwithstanding the foregoing, and unless otherwise required by law, User understands and agrees that (i) the party responsible for providing such inaccurate User Content, and not CareEntrust, is solely responsible for correcting such inaccuracies and for any and all liability resulting from such inaccuracies, and (ii) it is ultimately User's responsibility to notify the party responsible regarding such inaccuracies.

- h. Patient Care.** Without limiting the generality of any other provision of this Agreement, User and its agents shall be solely responsible for all decisions and actions taken or not taken involving patient care, utilization management, and quality management for their respective patients and clients resulting from or in any way related to the use (or misuse) of or access to the Services or the information made available thereby. The Services and any information made available thereby are not intended to diagnose, treat, cure, or prevent any disease. The Services do not contain all medical information that may be relevant or necessary and should not be used as a substitute for seeking or rendering independent medical advice, diagnosis, treatment, or care. Users should seek the advice of a physician or other qualified health professional with any questions regarding a medical condition, and such Users should never disregard or delay in seeking professional medical advice based upon anything contained in the Services. Neither User, its Agents, nor any of its patients shall have any recourse against CareEntrust, and each shall waive any claims against CareEntrust for any loss, damage, claim, or cost relating to or resulting from User's use or misuse of the Services or the information made available thereby.
- i. Indemnification.** User agrees to release, indemnify, defend, and hold harmless CareEntrust, its licensors, and third-party providers (including the officers, directors, members, employees, affiliates, agents, representatives or contractors of the foregoing) and other users from and against all claims brought by any persons arising from or relating to User's (or any of its agents', and, in the event that User is the parent or guardian of a minor child, children, or other dependents that have been granted username(s) and password(s) to access the Services, such minor child(ren)'s or dependent's) acts or omissions including, without limitation, User's use or misuse of the Services or the information made available thereby, User's failure to comply with or perform User's obligations under this Agreement, User's provision, modification, or use of User Content, and any breach by User of a representation or warranty under this Agreement. Any indemnification made pursuant to this Agreement shall include payment of all costs associated with defending the claim or cause of action involved, whether or not such claims or causes of action are meritorious, including reasonable attorneys' fees and any settlement by or judgment against the party to be

indemnified. The indemnification obligations of the parties shall not, as to third parties, be a waiver of any defense or immunity otherwise available, and the indemnifying party, in indemnifying the indemnified party, shall be entitled to assert in any action every defense or immunity that the indemnified party could assert on its own behalf.

11. Hardware and Software

- a. Software and Hardware Provided by User.** User shall be responsible for procuring all hardware, software, electrical, telecommunications and Internet connections and links, and other physical equipment, services, and requirements (“Equipment”) necessary for it to access and use the Services. User’s Equipment shall conform to CareEntrust’s then-current specifications, if any. CareEntrust reserves the right to modify or otherwise alter such specifications from time to time in its sole discretion. User shall be responsible for ensuring that all its Equipment used to interface with the Services is properly configured including, but not limited to, its operating system, web browser, and Internet connectivity.
- b. Malicious Software, Viruses and other Threats.** User shall use best efforts to ensure that its connection to and use of the Services including, without limitation, the medium containing any User Content, data or other information provided to the foregoing, does not include, and that any method of transmitting such data will not introduce, any program, routine, subroutine, data, or other aspect or component (including, without limitation, malicious software or “malware,” viruses, worms, and Trojan Horses) which will disrupt the proper operation of the Services or any part thereof or any hardware or software used by CareEntrust in connection therewith, or which, upon the occurrence of a certain event, the passage of time, or the taking of or failure to take any action will cause the Services or any part thereof or any hardware, software or data used by CareEntrust or any other User in connection therewith, to be destroyed, damaged, or rendered inoperable. User shall not engage in any other activities that could cause a disruption of the Services or other harm to CareEntrust, including, without limitation, pinging, flooding, mailbombing, or denial of service attacks or any other activity that may disrupt the use of or interfere with the ability of others to effectively use the Services.

12. User Representations and Warranties. User represents and warrants to CareEntrust that: (a) User is either (i) over the age of eighteen (18); or (ii) an emancipated minor under the laws of such User’s state of domicile and/or residence; (b) User has the requisite power and authority to enter into and perform User’s obligations under this Agreement whether on behalf of User or any entity or other person of whom User purports to be the agent, represent, or otherwise act on whose behalf; (c) all information provided to CareEntrust by User, including, without limitation, the User Content, is truthful, accurate, and complete; (d) User, and if User is the parent or guardian of a minor child, minor children, and/or other dependents, such minor children and/or dependents, shall comply with all terms and conditions of this Agreement; (e) User has provided and will maintain accurate and complete registration information with CareEntrust, including, without limitation, User’s legal name, contact information, and any and all other information requested by CareEntrust from time to time; (f) User’s access to and/or use of, and User’s continued access to and/or use of, the Services and

any information made available therein does not and will not constitute a breach or violation of any law, statute, regulation, or any other agreement, contract, terms of use, or similar policy or understanding to which User is or may be subject; and (g) User is the owner of the User Content that it provides to CareEntrust through its use of the Services pursuant to this Agreement, or User has the right to provide such User Content and grant to CareEntrust the licenses set forth in Section 4.

13. Entity Agreement. If you meet the definition of an “Entity” as used in the Entity Agreement located at <http://www.careentrust.org/docs/ea/entity.pdf> , the provisions of that agreement shall apply and are hereby incorporated by reference.

14. Privacy. The terms and conditions of CareEntrust’s Privacy Policy, located at <http://www.careentrust.org/docs/priv/privacy-policy.pdf> , are expressly incorporated herein by reference (“Privacy Policy”). User acknowledges that it has read and understands the Privacy Policy and that User has the obligation to periodically review the Privacy Policy from time to time for any modifications or revisions. In the event that any provisions contained in this Agreement conflict with any terms, conditions, or clauses contained in the Privacy Policy, the provisions of this Agreement shall govern.

15. Miscellaneous

a. No Conflicting Terms. If there is any conflict between this Agreement and any other documents regarding the subject matter of this Agreement or the Services, then the provisions of this Agreement shall govern, whether such other documents are prior to or subsequent to this Agreement, or are signed or acknowledged by any director, officer, employee, representative or agent of CareEntrust.

b. Attorney’s Fees. If CareEntrust takes action and prevails (by itself or through its representatives) to enforce any of the provisions of this Agreement, including collection of damages or any amounts due hereunder, or if CareEntrust prevails in defense of an action brought by you or your agent, CareEntrust shall be entitled to recover from you (and you agree to pay), in addition to all sums to which it is entitled or any other relief, at law or in equity, reasonable and necessary attorney’s fees and any costs of any litigation.

c. Governing Law; Limitations; Venue. This Agreement shall be governed by the laws of the State of Missouri without regard to its internal provisions relating to conflicts or choice of law. To the extent allowed by applicable law, any claims or causes of action arising from or relating to your access to and use or misuse of the Services contemplated by this Agreement must be instituted within one (1) year from the date upon which such claim or cause arose or accrued. Further, any such claim or cause of action may only be brought in the state or federal courts located in Kansas City, Jackson County, Missouri. You agree to submit to the exclusive personal jurisdiction of such courts and hereby appoint the Secretary of State of the State of Missouri as your agent for service of process. You agree to waive any objection that the state or federal courts located in Kansas City, Missouri are an inconvenient forum.

d. Jurisdictional Issues. Unless otherwise specified, the materials in this web site are presented solely for the purpose of promoting programs, services, and other products available in the United States, its territories, possessions, and

protectorates. This site is controlled and operated by CareEntrust from its offices within the State of Missouri, United States of America. CareEntrust makes no representation that the Services are appropriate or available for use in other locations. Those who choose to access this site from other locations do so on their own initiative and are responsible for compliance with local laws, if and to the extent local laws are applicable. Software from this site may further be subject to United States export controls. No software from the Services may be downloaded or otherwise exported or re-exported to a country or in a manner contrary to the laws and regulations governing such exports administered by the Departments of State, Commerce or Treasury, or any other agency.

- e. **Assignment.** You may not assign any rights, obligations or privileges under this Agreement without the prior written consent of CareEntrust. Any assignment by you other than as provided for in this Section shall be null and void.
- f. **Severability.** If any provision of this Agreement is found unlawful or unenforceable in any respect, the court shall reform such provision so as to render it enforceable or, if it is not possible to reform such provision so as to make in enforceable, then delete such provision. As so reformed or modified, the court shall fully enforce this Agreement.
- g. **Third Party Beneficiaries.** Except as otherwise expressly set forth herein, there shall be no third party beneficiaries to this Agreement.
- h. **Supervening Events.** Neither CareEntrust nor any of its licensors or third-party vendors shall be deemed in violation of any provision of this Agreement if it is prevented from performing any of its obligations by reason of: (a) severe weather and storms; (b) earthquakes or other natural occurrences; (c) strikes or other labor unrest; (d) power or telecommunications failures; (e) acts of terrorism, nuclear, or other civil or military unrest or emergencies; (f) acts of legislative, judicial, executive, or administrative authorities; or (g) any other circumstances that are not within its reasonable control. This Section shall not apply to obligations imposed under applicable laws and regulations or obligations to pay money.
- i. **Entire Agreement.** THIS AGREEMENT IS COMPLETE AND EFFECTIVE AT THE TIME YOU AGREE TO IT EITHER BY CLICKING ON THE BUTTON INDICATED FOR ACCEPTANCE IN CONNECTION WITH THE PERIODIC AUTHORIZATION PROCEDURES TO ACCESS THE SERVICES SUBJECT TO THIS AGREEMENT OR BY ACCESSING OR OTHERWISE USING THE SERVICES, EITHER OF WHICH YOU AGREE MANIFESTS YOUR ASSENT TO THIS LEGALLY BINDING DOCUMENT. THE USER AGREEMENT, AND ANY OTHER ATTACHMENTS, EXHIBITS, OR DOCUMENTS REFERENCED HEREIN (AND ANY SUBSEQUENT MODIFICATIONS TO ANY OF THE SAME PURSUANT TO THE TERMS OF THIS AGREEMENT) CONSTITUTE THE ENTIRE AGREEMENT BY AND BETWEEN THE PARTIES.
- j. **Consent To Electronic Signatures.** YOU CONSENT TO USE OF ELECTRONIC SIGNATURES WITH DOCUMENTS RELATED TO THIS AGREEMENT. YOU ARE AWARE THAT SUCH CONSENT TO THE USE OF ELECTRONIC SIGNATURES IS APPLICABLE TO TRANSACTIONS CONSUMMATED USING THE SERVICES. YOU MAY WITHDRAW YOUR

CONSENT TO USE OF ELECTRONIC SIGNATURES BY PROVIDING A NON-ELECTRONIC SIGNED WRITING WITHDRAWING SUCH CONSENT TO CAREENTRUST. YOU MAY OBTAIN A PAPER COPY OF ANY ELECTRONIC RECORD BY VISITING CAREENTRUST AND REQUESTING SUCH A PAPER DOCUMENT, ALTHOUGH COPY EXPENSES MAY APPLY. YOU ARE AWARE THAT YOU ARE RESPONSIBLE FOR ALL EQUIPMENT REASONABLY NECESSARY TO ACCESS THE SERVICE AND TO USE THE ELECTRONIC SIGNATURE FUNCTION.

- k. **Survival.** The terms of Sections 1, 3, 4, 5, 7, 8, 10, and 12 – 15 shall survive the termination or expiration of this Agreement.

USER HAS READ, UNDERSTANDS, AND AGREES TO THE TERMS AND CONDITIONS OF THIS AGREEMENT.

I ACCEPT

I DO NOT ACCEPT