

Acentra Health Portal - Terms of Use Agreement

THE ACENTRA HEALTH PORTAL IS SUBJECT TO AND GOVERNED BY TERMS AND CONDITIONS OF USE. BY PROCEEDING OR USING THE ACENTRA HEALTH PORTAL YOU ARE AGREEING THAT YOU HAVE READ AND UNDERSTOOD THE TERMS AND CONDITIONS OF USE AND AGREE TO BE BOUND BY THEM. IF YOU DO NOT UNDERSTAND THE TERMS OR CONDITIONS OF USE OR DO NOT AGREE TO BE BOUND BY THEM, DO NOT PROCEED OR OTHERWISE USE THE ACENTRA HEALTH PORTAL. UNAUTHORIZED ACCESS TO THE ACENTRA HEALTH PORTAL IS PROHIBITED.

ACENTRA HEALTH PORTAL TERMS OF USE

1. This Terms of Use Agreement (the "Agreement") is between Keystone Peer Review Organization, LLC d/b/a Acentra Health ("We", "Us" or "Our"), the group/practice entity that has been provided an ID (as defined in Section 3 below) using this Portal (as defined below) (the "Provider") and the Users (as defined in Section 2 below) (the Provider and Users shall collectively be "You" or "Your"). This Agreement governs the use of the Acentra Health Portal, including without limitation, all software, insurance codes, graphics, logos, text, documentation, user guides, databases and compilations of all materials other than Patient Information (as defined in Section 6), enhancements, bug fixes, upgrades, modifications, and copies thereof, and all information, methods and processes contained therein (the "Portal"). By using the Portal, You agree that You accept the terms and conditions of use of the Portal and that You are an authorized user of the Portal. This Agreement is posted on the Portal and is subject to change at any time.

2. Authorized Personnel. This Portal is intended for access solely by physicians and authorized members of their staff. Authorized members include only (a) the personnel permitted to access and use the Portal by Provider ("Standard User(s)") and (b) Standard Users who have been assigned certain administrative duties ("Administrative User(s)") ("Standard Users" and "Administrative Users" shall be collectively "Users"). If You are an Administrative User, it is Your responsibility to identify Standard Users, and to authorize, monitor, and control access to and use of the Portal by such Standard Users. All Users using the Portal represent and warrant that s/he is authorized to use the Portal and to bind You to the terms of this Agreement.

3. Ownership and License of the Portal. 3.1 License Grant. Subject to the terms and conditions of this Agreement, We hereby grant to (a) Users a non-transferable, non-exclusive

limited right to use the Portal for the sole purpose of accessing and entering Patient Information (as defined in Section 6) and transmitting such Patient Information to Payors (as defined in Section 5) through the Portal; (b) Administrative Users a non-transferable, non-exclusive limited right to use the Portal to maintain, update and support the use of IDs (as defined in Section 4 below); and (c) Users a non-transferable, non-exclusive limited right to access and view the on-line informational files and user guides in the Portal for Your internal business purposes only.

3.2 Ownership. As between the parties, You agree that We are the exclusive owner of all right, title and interest in and to the Portal, including without limitation all patent, copyright, trademark, trade secret and other intellectual property rights therein, ("Intellectual Property"). All rights not expressly granted in this Agreement are reserved to us, and no rights or licenses, whether express, implied, arising by estoppel, or otherwise are conveyed or intended by this Agreement except as expressly provided in this Section. Any reproduction, distribution, public performance, or public display of these materials, in whole or in part, is prohibited without our express prior written permission or as expressly permitted in Section 3.1.

3.3 Expressly Prohibited Uses. You will not and You will not allow Users or others to: (a) make unauthorized use, disclosure or copying of the Portal or Intellectual Property; (b) disassemble, decompile, recast, or reverse engineer the Portal or Intellectual Property or create a substantially similar Portal and/or Intellectual Property; (c) rent, loan, lease, sublicense (except as permitted to Users), transfer, network, reproduce, display, or otherwise distribute the Portal and/or Intellectual Property; (d) copy the Portal and/or Intellectual Property in any form except as necessary to use the Portal in accordance with this Agreement; (e) modify, alter, delete or obscure any proprietary rights notice embedded in or affixed to the Portal and/or its Intellectual Property.

4. User IDs and Passwords. With the proper identification, a Provider will be allowed to register one initial user account (the "Administrative ID"). This Administrative User will then be responsible for creating additional user accounts and passwords for Standard Users to be used in conjunction with the Administrative ID for Standard Users to access and use the Portal ("User IDs") (the Administrative ID and the User ID(s) shall be "ID(s)"). You are solely responsible for (1) maintaining the strict confidentiality of the IDs assigned to Users, (2) instructing Users to not allow another person to use their IDs to access the Site, (3) any charges, damages, or losses that may be incurred or suffered as a result of You or Your Users failure to maintain the strict confidentiality of their IDs, and (4) promptly informing Us in writing of any need to deactivate an ID due to security concerns. We are not and will not be liable for any harm related to the theft of IDs, Your disclosure of IDs, or Your authorization to allow another person or entity to access and use the Portal using Your IDs. You agree to immediately notify Us of any unauthorized use of Your IDs.

5. Payor Requirements. You have been given access to the Portal through an arrangement or an agreement with a third party insurance company or a government entity (a "Payor") and You are permitted to use the Portal only as expressly permitted pursuant to the terms and conditions of this Agreement. Any requirements for the use of the Portal with respect to a

particular Payor's processing requirements and/or auto approval rules have been established by the Payor and Acentra Health bears no responsibility thereof. In the event that You are unable to enter, process or transmit Patient Information or have questions regarding the entry, processing or transmission of information with respect to a particular Payor, any remedies will be in accordance with Your arrangement or agreement with such Payor.

6. Patient Information. The Portal is intended to enable Users to enter and store confidential patient information ("Patient Information") and to transmit such Patient Information to a Payor. Certain state and federal laws, as well as ethical and licensure requirements of Your profession may impose obligations with respect to patient confidentiality that may limit the ability of physicians, health care providers, and persons acting on their behalf, to make use of certain services or to transmit certain information to third parties. You represent and warrant that You will, at all times during the term of this Agreement and thereafter, comply with all 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 Patient Information, and use Your best efforts to cause all persons or entities under Your direction or control to comply with such laws. You are, at all times during the term of this Agreement and thereafter, solely 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 Patient Information You transmit, store, or receive in connection with the Portal. You agree that We, our licensors, and all other persons or entities involved in the operation of Portal, have the right to monitor, retrieve, store and use Patient Information in connection with the operation of such Services, and are acting on Your behalf in transmitting Patient Information. We agree to use commercially reasonable efforts to maintain the confidentiality of such information and prevent the disclosure of such information to third parties except in connection with the transmission, storage, retrieval, and disclosure of such information on Your behalf and as may be required or permitted by law. We will use commercially reasonable efforts so that the Portal will not prevent You from complying with the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). Each party shall be responsible for ensuring that performance of its obligations and exercise of its rights under this Agreement complies with all final HIPAA regulations that are applicable to that party in the operation of its business. Neither party shall have responsibility for the applicability of HIPAA regulations to the other party's business. Notwithstanding the above, You are solely responsible for assessing Your HIPAA compliance and You shall adopt, modify and/or implement all policies and procedures necessary to comply with the final HIPAA regulations. WE CANNOT AND DO NOT ASSUME ANY RESPONSIBILITY FOR YOUR USE OR MISUSE OF PATIENT INFORMATION OR OTHER INFORMATION TRANSMITTED, MONITORED, STORED OR RECEIVED USING THE SITE OR THE SERVICES.

7. Disclaimers. The Portal is a service to facilitate reporting care management requests to insurance companies only and is not a substitute for the professional judgment of the health care professional in diagnosing and treating patients. You acknowledge that the Portal,

including without limitation any informational or educational material therein, is in no way intended to prescribe, designate or limit medical care to be provided or procedures to be performed. You accept responsibility for and acknowledge that You will exercise Your own independent judgment in Your use of the Portal and shall be solely responsible for such use. You shall ensure the compliance of this Agreement by Your employees, Users, agents, officers, directors and other representatives and shall bear the responsibility for any breach of this Agreement by them. You further agree that We shall have no liability to You or any third party arising out of Your or any User or any third party's use of the Portal. Unless otherwise agreed in writing by the parties, You further acknowledge that You shall be solely responsible for any modifications, additions, alterations or other changes made by You to the Portal or Patient Information. EXCEPT AS EXPRESSLY PROVIDED HEREIN, WE MAKE NO WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR NON-INFRINGEMENT, OR WARRANTIES ARISING BY COURSE OF DEALING OR CUSTOM OF TRADE. EXCEPT AS EXPRESSLY PROVIDED HEREIN, WE MAKE NO REPRESENTATIONS OR WARRANTIES THAT YOUR ACCESS TO AND USE OF THE PORTAL (1) WILL BE UNINTERRUPTED OR ERROR-FREE, (2) IS FREE OF VIRUSES, UNAUTHORIZED CODE, OR OTHER HARMFUL COMPONENTS, (3) IS SECURE OR (4) WILL PRODUCE ACCURATE RESULTS. YOU ARE RESPONSIBLE FOR TAKING ALL PRECAUTIONS YOU BELIEVE NECESSARY OR ADVISABLE TO PROTECT YOU AGAINST ANY CLAIM, DAMAGE, LOSS OR HAZARD THAT MAY ARISE BY VIRTUE OF YOUR USE OF THE PORTAL. NO ORAL OR WRITTEN INFORMATION OR ADVICE PROVIDED BY LICENSOR, ITS AGENTS OR EMPLOYEES WILL CREATE ANY WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF THE WARRANTIES EXPRESSLY PROVIDED IN THIS AGREEMENT.

8. Exclusion of Damages. UNDER NO CIRCUMSTANCES WHATSOEVER WILL WE BE RESPONSIBLE OR LIABLE TO YOU OR ANY OTHER ENTITY FOR ANY DIRECT, COMPENSATORY, INDIRECT, INCIDENTAL, CONSEQUENTIAL (INCLUDING LOST PROFITS AND LOST BUSINESS OPPORTUNITIES), SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES THAT RESULT FROM OR RELATE IN ANY MANNER WHATSOEVER TO (1) YOUR USE OF THE PORTAL OR (2) ERRORS, INACCURACIES, OMISSIONS, DEFECTS, UNTIMELINESS, SECURITY BREACHES, OR ANY OTHER FAILURE TO PERFORM BY US. THE FOREGOING EXCLUSION SHALL APPLY REGARDLESS OF WHETHER WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

9. Limitation of Liability. IF, NOTWITHSTANDING THE OTHER TERMS OF THIS AGREEMENT, WE SHOULD HAVE ANY LIABILITY TO YOU OR ANY THIRD PARTY FOR ANY LOSS, HARM OR DAMAGE, YOU AND WE AGREE THAT SUCH LIABILITY SHALL UNDER NO CIRCUMSTANCES EXCEED ONE THOUSAND DOLLARS (\$1000.00). YOU AND WE AGREE THAT THE FOREGOING LIMITATION OF LIABILITY IS AN AGREED ALLOCATION OF RISK BETWEEN YOU AND US. YOU ACKNOWLEDGE THAT ABSENT YOUR AGREEMENT TO THIS LIMITATION OF LIABILITY, WE WOULD NOT PROVIDE THE SITE TO YOU.

10. Indemnity. You agree to defend, indemnify and hold Us harmless against any losses, expenses, costs or damages (including our reasonable attorneys, fees, expert fees, and other reasonable costs of litigation) arising from, incurred as a result of, or in any manner related to (1) Your breach of the terms of this Agreement, (2) Your unauthorized or unlawful use of the Portal, and (3) the unauthorized or unlawful use of the Portal by any other person using Your IDs.

11. Confidentiality. You agree to keep the Confidential Information (as defined below) strictly confidential in the same manner and with the same care and discretion that You treat Your own most confidential and sensitive information. You agree not to publish, disclose, divulge or disseminate the Confidential Information to any third party. You further agree to grant access to Confidential Information only to Your staff and employees who are under an obligation to keep the Confidential Information confidential and who will not disclose any such Confidential Information. You agree that You will not, at any time, without written permission of Acentra Health: (a) copy or duplicate the Confidential Information, or any part thereof; (b) use the Confidential Information to develop functionally similar computer software; or (c) permit any third party to do any of the foregoing. "Confidential Information" shall include the IDs, Patient Information, Payors, the Portal, Intellectual Property, any ideas, improvements, features, customizations, enhancements, inventions, know-how or other intellectual property created, invented, conceived, suggested, developed or reduced to practice by either You or Us pursuant to this Agreement. Upon termination, You shall immediately cease all use of the Confidential Information, in whatever form, and, at our option, return or destroy and certify in writing the destruction thereof any and all copies of the Confidential Information.

12. Term and Termination. The term of this Agreement ("Term") shall begin upon the date first used by You and shall continue unless otherwise terminated. We may immediately terminate this Agreement at any time upon notice to You.

13. Injunctive Relief. You acknowledge that a breach by Licensee of any of the covenants set forth herein will result in immediate and irreparable injury to us, and that in the event of a breach or threatened breach, We will be entitled to seek from any court of competent jurisdiction preliminary and permanent injunctive relief, which remedy will be cumulative and in addition to any other rights and remedies to which We may be entitled, without necessity of posting bond or other security.

14. U.S. Government End Users. The software and documentation in the Portal is a "commercial item" as that term is defined in 48 C.F.R 2.101 (Oct. 2010), consisting of "commercial computer software" and "commercial computer software documentation", as

such terms are used in 48 C.F.R. 12.212 (Oct. 2010). Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4 (Oct. 2010), all U. S. Government End Users acquire the software and documentation in the Portal with only those rights set forth in this Agreement.

15. General. This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof, and supersedes all prior agreements and understandings regarding the Portal. If any provision of this Agreement is held to be unenforceable, such provision shall be reformed only to the extent necessary to make it enforceable. You shall not assign this Agreement or all or any part of its rights or obligations hereunder without our prior written consent, and any attempt to the contrary shall be void and a material breach of this Agreement. Neither party shall be responsible for any delay or failure of performance resulting from causes beyond its control. Our failure to exercise any of our rights under this Agreement for a breach thereof shall not be deemed to be a waiver of any subsequent breach of the same or any other provision. The titles of the sections hereof are for convenience only and do not in any way limit or amplify the terms and conditions of this Agreement. All sections necessary to interpret the rights and duties of the parties shall survive termination of this Agreement. This Agreement shall be interpreted and governed according to the laws of the state where the Payor through which you receive access to this Portal is located. For example, if you receive access to the Portal through an arrangement with the State of North Dakota's Medicaid Program, this Agreement shall be governed according to the laws of the State of North Dakota.

16. State-Specific Terms. These terms of use may vary based on the location of the Payor through which you receive access to this Portal. Please see below for state-specific terms:

North Dakota.

The following terms shall replace the terms stated above for any Agreement governed by the laws of the State of North Dakota:

8. Exclusion of Damages. EXCEPT FOR LOSS THAT CANNOT BE LIMITED UNDER N.D.C.C. 32-12.2-15, UNDER NO CIRCUMSTANCES WHATSOEVER WILL WE BE RESPONSIBLE OR LIABLE TO YOU OR ANY OTHER ENTITY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL (INCLUDING LOST PROFITS AND LOST BUSINESS OPPORTUNITIES), SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES THAT RESULT FROM OR RELATE IN ANY MANNER WHATSOEVER TO (1) YOUR USE OF THE PORTAL OR (2) ERRORS, INACCURACIES, OMISSIONS, DEFECTS, UNTIMELINESS, SECURITY BREACHES, OR ANY OTHER FAILURE TO PERFORM BY US. THE FOREGOING EXCLUSION SHALL APPLY REGARDLESS OF WHETHER WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

9. Limitation of Liability. IF, NOTWITHSTANDING THE OTHER TERMS OF THIS AGREEMENT, WE SHOULD HAVE ANY LIABILITY TO YOU OR ANY THIRD PARTY FOR ANY DIRECT LOSS,

HARM OR DAMAGE, YOU AND WE AGREE THAT SUCH LIABILITY, EXCEPT FOR LOSS THAT CANNOT BE LIMITED UNDER N.D.C.C. 32-12.2-15, SHALL UNDER NO CIRCUMSTANCES EXCEED TWICE THE AMOUNT PAID BY YOU UNDER THIS AGREEMENT. YOU AND WE AGREE THAT THE FOREGOING LIMITATION OF LIABILITY IS AN AGREED ALLOCATION OF RISK BETWEEN YOU AND US. YOU ACKNOWLEDGE THAT ABSENT YOUR AGREEMENT TO THIS LIMITATION OF LIABILITY, WE WOULD NOT PROVIDE THE SITE TO YOU.

10. Indemnity. This section shall not apply to Agreements governed by the laws of the State of North Dakota.

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