

Date of last update: June 9, 2008

Key Elements of Terms of Use

(refer to entire document for complete Terms of Use)

- Subject to legitimate legal constraints and to system-design constraints, you control access to your personal health information using this system. This is a foundational element of our Terms of Use.
- Our system is designed to restrict access to your information to those who present valid credentials within our system. We can provide no guarantee that individuals possessing valid credentials will not mis-use the credentials to access your personal health information, however, privacy settings incorporated into the system give you the option of disallowing such access unless your personal identification number (PIN) is provided.
- You agree to allow HealthCapable, and third-parties acting on its behalf, to collect personal health information on your behalf from various sources, particularly including health care providers who are caring for you and third-party payers who receive and pay medical bills for you. You will have the opportunity to view and correct or annotate this information.
- In general, you may not change information that has been submitted by an independent source, but you will have the opportunity to view and annotate this information.
- The source of information in our system will be displayed according to system capabilities.
- Any and all claims that we make about improving health care are based on historical studies of populations implementing systems with similar goals. While we expect that implementation and use of the HealthCard will improve health care across a population, individual results will vary. You assume all risks associated with use of the system as a condition of use.
- Under certain circumstances the information contained in our system could contribute to medical error. For example, the record contained in our system could either omit or include information that caused inaccuracies. Therefore, the information contained in this system should only be a single factor among many that are used in medical decision making.
- **IF, NOTWITHSTANDING THE OTHER TERMS OF THIS AGREEMENT (OR ANY OTHER AGREEMENT BETWEEN YOU AND US), WE (OR OUR CONTENT PROVIDERS OR SPONSOR/ADVERTISERS) SHOULD HAVE ANY LIABILITY FOR ANY LOSS, HARM OR DAMAGE, YOU AND WE (ON BEHALF OF OURSELVES AND OUR CONTENT PROVIDERS AND SPONSOR/ADVERTISERS) AGREE THAT SUCH LIABILITY SHALL UNDER NO CIRCUMSTANCES EXCEED \$1,000.**

HealthCapable reserves the right, in its sole discretion, to supplement, modify or discontinue any aspect of our Service. HealthCapable also reserves the right, in its sole discretion, to modify this Agreement in any manner and to adopt additional terms or conditions governing your access and use of our Service, and the terms and conditions related to the access and use of our Service, at any time, without prior notice. The terms of any such amendment to this Agreement shall become effective immediately upon posting of such terms on our web site, and your use of our Service on or after such effective date shall constitute acceptance of such amended terms.

Notwithstanding the foregoing, the patient's right to privacy is a cornerstone element of the Service. Any changes to the Terms of Use that are designed to decrease the patient's control over access to his personal health information will require a positive affirmative consent on the part of the patient. This paragraph is specifically not subject to change without notice and changes to this paragraph will also require a positive affirmative consent on the part of the patient prior to taking effect.

If you disagree with these Terms of Use (as modified from time to time), or are dissatisfied with the site or Service, your sole and exclusive remedy is to discontinue using the site and Service.

The information in this database is intended to supplement, not substitute for, the expertise and judgment of your healthcare professional. The information is not intended to cover all possible uses, directions, precautions, drug interactions or adverse effects, nor should it be construed to indicate that use of a particular drug is safe, appropriate or effective for you. You should consult your healthcare professional before taking any drug, changing your diet or commencing or discontinuing any course of treatment.

HealthCapable has created a Service ("Service") designed to improve the efficiency of communications within the health care industry while respecting the privacy of the patient. HealthCapable allows access to its Service subject to the following Terms of Use:

THE SERVICE

HealthCapable, Inc. (HealthCapable, or "we") provides a subscription-based Service that serves as a convenient medical record keeping and information resource for your use.

HealthCapable makes no warranty or representation, either expressed or implied, with respect to this Service, the associated software, or documentation (collectively called "Service"). HealthCapable expressly disclaims any warranty of the quality and performance of, merchantability, or fitness for a particular purpose. If you use the Service, you agree to comply with the applicable terms and conditions of this Agreement, also called our Terms of Use.

The aim of the Service is improved safety of medical care through improved communication between patients and medical care providers; and improved efficiency of medical care through improved availability of information pertinent to patient care. Because the Service is computer and internet based, and because the Service allows many users whose identity HealthCapable does not independently verify, it has many limitations, specifically including limitations on reliability. As a Service, it will not be available 100% of the time, and it is expressly understood that the information contained within the Service will never be 100% reliable. Specifically, there is no warranty that any service offered by HealthCapable will be uninterrupted or error free.

The Service does not provide medical care. No patient / health care provider relationship is ever formed between individuals or groups and HealthCapable. Doctors provide health care on an individual basis; our Service cannot be construed in any way to provide health care. We are not responsible for any errors or omissions. All information in this site is provided "as is", with no guarantee of completeness, accuracy, timeliness or of the results obtained from the use of this information, and without warranty of any kind, express or implied, including, but not limited to warranties of performance, merchantability and fitness for a particular purpose.

Much of the content stored in our Service is provided by end users or other third parties. HealthCapable is not responsible for the content of any of this data, nor is HealthCapable responsible for the completeness or accuracy of any such data. The content contained on our Service remains solely the responsibility of the party providing the content. HealthCapable is not responsible in any way for such data, and HealthCapable does not review such content in any way, including, without limitation, screening such content for the presence of computer viruses.

Only you can confirm that a health care provider has accessed and/or thoroughly reviewed information stored using the Service; you should never assume that your health care provider has read anything in the Service.

You agree that you should contact your physician if you have any questions about your medical condition, or if you need medical help. If you need emergency medical help, you should immediately call 911, your local emergency number, or your physician.

Because the information contained in the Service belongs to the patient, and because the patient and health care providers are allowed to view and edit personal health information in the Service, neither HealthCapable, Inc., nor any physician or other health care provider, assumes any liability whatsoever for the information contained in the Service. Every time you use the Service, you are responsible for verifying the accuracy of the information contained therein.

Your Account Number, User Name, and Personal Identification Number (PIN) identify you while using the Service. You must closely safeguard your Account Number, User Name and Personal Identification Number (PIN), much like a credit card number and password; and you must immediately notify

HealthCapable if it becomes compromised in any way, whether by theft, unauthorized duplication or otherwise. You are responsible for protecting these credentials from unauthorized access and use by third parties. If you believe the security of your User Name or Account Number and Personal Identification Number (PIN) have been compromised, contact HealthCapable immediately by sending an email containing user name and account number to support@healthcapable.com. You expressly assume all risk associated with unauthorized use of your User Name, Account Number, Password, or any device which HealthCapable supplies to you which may facilitate the retrieval of your personal health information.

PRIVACY, INFORMATION AVAILABILITY

Privacy and Emergency Access: To facilitate the retrieval of your personal health information in the event of an emergency, the Service is designed for you to allow medical personnel to retrieve your information using only your account number. In some instances, for example when you are unconscious or extremely ill, this may mean that medical personnel can retrieve your information without your prior separate authorization. The information that is retrieved in this manner may be invaluable in initiating your medical care safely. You are hereby made expressly aware that the loss of any device provided to you by HealthCapable can subject your personal health information to public disclosure, as unauthorized users could retrieve your information using the emergency access feature of the device. In the event your device is lost, you must immediately log in to your account and use the Privacy Settings to disallow emergency access to your Personal Health Information to minimize the risk of unauthorized access to your personal health information (see next item).

Using the Service, you can configure the level of access available using your account number only. You will indicate by your choices the amount or degree of information the Service will convey, in the event an emergency, if a medical care provider uses your account number to retrieve your personal health information. YOU HAVE THE ABILITY TO CONFIGURE THE EMERGENCY ACCESS PAGE TO PROVIDE NO INFORMATION AT ALL, which is appropriate if privacy is your primary concern, or some other level of information access, appropriate if information accessibility to health care providers is your desire. Regardless of how you choose to configure the emergency access page, your choice will be very important in emergency situations for health care providers attempting to access your personal health information in the event you are very sick or unconscious, or otherwise unable to provide your Personal Identification Number (PIN).

Except as otherwise required by law, HealthCapable shall keep all information you store on our Service confidential and private in accordance with our privacy policy and these Terms of Use. HealthCapable intends to meet or exceed regulatory and industry guidelines regarding privacy, confidentiality, and

information security, including Health Insurance Portability and Accountability Act (HIPAA) rules for information security.

You are encouraged to print a paper copy of the information that the Service is storing for you, particularly each time you update the record. You are responsible for the safety and security of any copies thus generated.

If HealthCapable decides for any reason to discontinue this Service, you will be notified via the email address you provide to us to allow you time to make other arrangements for the health information stored in the Service. If you have failed to keep your email address current within the Service, we assume no responsibility for the maintenance or loss of your personal health information.

If you wish to have your personal health information deleted from the Service, you should immediately email support@healthcapable.com to initiate the information exchange required to make such arrangements.

HealthCapable, and its contractors, will occasionally have legitimate needs to access data stored on our servers for limited purposes of Service maintenance and/or troubleshooting. Such access is limited to that which is necessary to accomplish the limited purpose.

HealthCapable will collect information that reveals Service utilization and activity statistics so we can better understand how the Service is being used. This data is stored anonymously and cannot be used to retrieve your personal health information.

CONTACT, LEGAL NOTICES, JURISDICTION

You must keep your email contact information current within the HealthCapable Service, so that we can reach you with important notices and information. Any notice will be effective as of the time and date it was sent to the most recent email address you have provided to HealthCapable. If you fail to keep your email contact information current, you relieve HealthCapable from all responsibility and liability associated with important notices and information. Your email contact information will not be rented or sold to third-parties for any purpose.

HealthCapable cooperates with law enforcement inquires as a matter of policy, and will comply with valid orders from a court of competent jurisdiction seeking access to information. You will be notified by email regarding any court ordered access or judicial petitions for access.

You agree to indemnify, defend, and hold harmless HealthCapable, its officers, directors, employees, agents, licensors, suppliers, and affiliates from and against any and all claims, actions or demands,

liabilities, and settlements, including but not limited to reasonable legal and accounting fees resulting from, or alleged to result from, your violation of these Terms of Use or any activity related to your account by you or any other person accessing HealthCapable using your account.

You agree that all agreements, notices, records, disclosures, and other communications made electronically between you and HealthCapable or your health care provider satisfy all legal requirements that such communications be in writing.

Any controversy or claim arising out of or relating to this Agreement or any HealthCapable service, product, or system, or the HealthCapable Service shall be brought, in writing, to the attention of an officer (CEO, President, or Secretary) of HealthCapable to attempt to achieve a mutually acceptable resolution prior to any legal action.

These Terms of Use will be governed by Illinois law for all purposes, without regard to or application of choice of law rules or principles. You hereby consent to the jurisdiction and venue of the courts of Illinois. You should be aware that some jurisdictions do not allow for the exclusion of certain warranties or the limitation or exclusion for incidental or consequential damages which are contained in this Terms of Use Agreement. By agreeing to be bound by the Terms of Use contained in this document you may be waiving legal rights which could be available to you in another jurisdiction.

If you take legal action relating to these terms, you agree that the state and/or federal courts located in the State of Illinois, County of Cook shall have personal and exclusive jurisdiction over such action, and agree not to request a change of venue. The parties acknowledge that a significant part of this agreement occurred within the state of Illinois.

Certain limitations on our liability contained in these Terms of Use may be disallowed in certain circumstances. In any event, the pre-agreed total maximum liability associated with the use of this Service is limited to \$1,000. **YOU AND WE (ON BEHALF OF OURSELVES AND OUR CONTENT PROVIDERS AND SPONSOR/ADVERTISERS) AGREE THAT THE FOREGOING LIMITATION OF LIABILITY IS AN AGREED ALLOCATION OF RISK BETWEEN YOU AND US (AND OUR CONTENT PROVIDERS AND SPONSOR/ADVERTISERS) AND REFLECTS THE FEES, IF ANY, WE CHARGE YOU TO USE THIS SITE, THE SERVICES AND THE CONTENT. YOU ACKNOWLEDGE THAT ABSENT YOUR AGREEMENT TO THIS LIMITATION OF LIABILITY, WE WOULD NOT PROVIDE THE SITE, THE SERVICES OR THE CONTENT TO YOU.**

HealthCapable is based in Illinois, in the United States of America. The Service offered by HealthCapable may or may not be appropriate outside of the United States; no claims are made that they are appropriate for outside of the United States. If you access the HealthCapable Service from outside the United States, you do so at your own risk and are responsible for compliance with the laws of your jurisdiction.

These Terms of Use and all other legal notices (including the HealthCapable Privacy Policy) constitutes the entire agreement between you and HealthCapable with respect to the use of HealthCapable services and products. Your use of the HealthCapable Service is also subject to the HealthCapable Privacy Policy, published on our web site (www.healthcapable.com). You may also be subject to additional terms and conditions that may apply when you use affiliate services, third-party content, or third-party software.

Any waiver by HealthCapable of the provisions of these Terms and Conditions, or of HealthCapable's rights or remedies under this Agreement must be in writing to be effective, AND must be signed by an officer (President, Vice President, or Secretary) of HealthCapable. Any waiver in a particular instance shall not constitute a waiver of the same or different rights or breaches in any other instance. Failure, neglect or delay by HealthCapable to enforce the provisions of this Agreement or HealthCapable's rights or remedies at any time will not be construed and will not be deemed to be a waiver of HealthCapable's rights under this Agreement and will not prejudice HealthCapable's right to take subsequent action. No exercise or enforcement of any right or remedy under this Agreement will preclude the enforcement of any other right or remedy under this Agreement or that HealthCapable is entitled by law to enforce. If any provision of these Terms of Use or of any other legal notices posted by HealthCapable on this Web site is found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavor to give effect to the parties' intentions as reflected in such provision, and the other provisions of the Terms of Use should remain in full force and effect.

HealthCapable may assign its rights and duties under this Agreement to any party at any time without notice to you and / or your approval.

Except for the indemnification provisions shown above, you shall not be liable to HealthCapable for any incidental, indirect, special, punitive, or consequential damages, including, but not limited to, loss of anticipated or actual profits, business, or income.

INTELLECTUAL PROPERTY

All of the content of this Web site, including text, art, graphics, logos, button icons, images, pictures, audio clips, and software is the property of eCapable, Inc., or HealthCapable, network member institutions, partners, or content providers and is protected by U.S. and international copyright laws. Any other use of such content, including modification, transmission, presentation, distribution, or republication is prohibited without the express prior written consent of HealthCapable.

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PROHIBITED USE

As a condition to your use of the HealthCapable Web site and Service, you agree you will not: (i) use the HealthCapable Web site or Service to infringe the intellectual property rights of others in any way; (ii) use the HealthCapable Web site or Service, or attempt to penetrate, modify or manipulate the HealthCapable Web site or Service or any of the hardware or software thereof, in order to: invade the privacy of, obtain the identity of, or obtain any personal information about any other user of the HealthCapable Web site or Service; (iii) attempt to access information that is not otherwise deliberately made available to you through the HealthCapable Web site or Service; (iv) modify, erase or damage any information contained on the computer of any user connected to the HealthCapable Web site or Service; (v) use the information available to you through the HealthCapable Web site or Service to develop a competing product or service, or (vi) reverse engineer any portion of the HealthCapable Web site or Service. This Web site or any portion thereof may not be reproduced, duplicated, copied, sold, resold, or otherwise exploited for any commercial purposes not expressly permitted in writing by HealthCapable.

You agree that you will not upload or transmit any communication or content of any type that infringes or violates any rights of any person.

HealthCapable reserves the right to refuse service and terminate accounts, for reasons including, but not limited to, a belief by HealthCapable, in its absolute discretion, that user conduct violates applicable law or is harmful to the interests of HealthCapable, its members, partners, suppliers, or other users, or for any other reason, at HealthCapable's sole discretion, with or without cause.

SUBSCRIPTIONS

HealthCapable charges a subscription fee for the use of our Service. Certain prices, as well as other terms and conditions for each of these products and services, is set forth on the web site. HealthCapable reserves the right to change service prices and other terms and conditions without notice. If such changes have been made, you have the right to terminate a subscription within 30 days, and may request a pro-rated refund of the balance of your subscription fee. Unless your subscription has been made by a third party which has made separate arrangements for invoicing, HealthCapable will charge your credit card for your subscription. Subscriptions paid by credit card will be automatically renewed at the end of the term in 1-year increments, unless you cancel your subscription. Please note, if you have subscribed using a credit card, it is your responsibility to cancel (see Termination.)

Even if a third-party has paid for your subscription, you must accept these terms of use and activate your account using the procedures in place for account activation.

Unless your subscription cost has been paid by a third party, you agree to pay the current subscription fees in order to use and access the Service. The current fees are clearly marked on the subscription web pages related to each specific product or service. Unless you are part of a third party account, each year, at the annual renewal date, your annual subscription fee will appear on your credit card statement. You agree to make payment based upon the transaction summary. If any authority imposes a duty, tax, levy or fee on your use of the Services, you agree to pay that amount.

You are responsible for the selection of, use of and payment for any telecommunications, internet access, and other Services and services required for you to get access to our Service. If you receive a charge from HealthCapable that you believe is not correct, contact HealthCapable Customer Support at support@HealthCapable.com.

TERMINATION

You may terminate your subscription to our Service at any time by providing email notice to HealthCapable at support@healthcapable.com. HealthCapable also reserves the right to terminate your subscription. All applicable provisions of the Agreement will survive termination of this Agreement. Upon termination, no refunds will be provided unless you have notified us that you are terminating your agreement under the terms outlined in the paragraphs pertaining to subscription fees, above. The information stored in our Service associated with your account will remain for a period of time at HealthCapable's sole discretion. This means you might be able to reactivate your account using your User ID and password, bring the subscription payment status up to date, and again access your personal

health information previously stored on the Service. HealthCapable specifically does **not** guarantee that this will be the case.

If you are a credentialed health care provider, HealthCapable may choose to allow you to access Personal Health Information for patients using a lookup system independent of their HealthCard account number. You agree to retrieve Personal Health Information ONLY for patients who give you their consent, whether verbally or in writing. In certain circumstances, it may come to HealthCapable's attention that you, or others using your authentication credentials, have possibly gained unauthorized access to Personal Health Information (whether yours or that of another). HealthCapable reserves the right to, without warning, restrict, suspend, or terminate your access to Personal Health Information. Access restriction decisions are made by HealthCapable and are final.

QUESTIONS / FOR MORE INFORMATION

Questions or problems regarding use of our Service may be directed to HealthCapable in writing to HealthCapable 233 E. Erie, Suite 2406, Chicago, IL 60611; or email at support@healthcapable.com. You agree that HealthCapable may keep records of the conversations that HealthCapable employees have with you in order to monitor the quality of HealthCapable's service and to ensure that the information needed is received. However, HealthCapable's customer service employees are not authorized to waive any provision of this Agreement.

ADDITIONAL MEDICAL DISCLAIMERS

This site is designed to offer you general health information for educational purposes only. The health information furnished on this site and the interactive responses are not intended to be professional advice and are not intended to replace personal consultation with a qualified physician, pharmacist or other healthcare professional. You must always seek the advice of a professional for questions related to your disease, disease symptoms, and appropriate therapeutic treatments. If you have or suspect that you have a medical problem or condition, please contact a qualified healthcare provider immediately. **You should never disregard medical advice or delay in seeking it because of something you have read on this site.**

We do not make any warranty that the content on this site satisfies government regulations requiring disclosure of information on prescription drug products. The content was developed for use in the United States, and neither we nor our content providers make any representation concerning the

content when used in any other country. While information on this site has been obtained from sources believed to be reliable, neither we nor our content providers warrant the accuracy of codes, prices or other data contained on this site.

We do not give medical advice, nor do we provide medical or diagnostic services. Medical information changes rapidly. Neither we nor our content providers guarantee that the content covers all possible uses, directions, precautions, drug interactions, or adverse effects that may be associated with any therapeutic treatments.

Your reliance upon information and content obtained by you at or through this site is solely at your own risk. Neither we nor our content providers assume any liability or responsibility for damage or injury (including death) to you, other persons or property arising from any use of any product, information, idea or instruction contained in the content or services provided to you.

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Unless this agreement accompanies an additional written contract between you and HealthCapable, this Agreement sets forth the complete and final understanding between HealthCapable and you with respect to the subject matter of this Agreement and supersedes any previous and contemporaneous communications, representations, understandings and agreements, whether oral or written, between HealthCapable and you with respect to said subject matter.

I understand and agree that my use of this Web site and the Services contained herein, including, without limitation, the Service, will be subject to all of the Terms, Conditions and Disclaimers contained within this document.