

EPICCARE LINK ACCESS AGREEMENT

This EpicCare Link Access Agreement (this “Agreement”), effective as of _____ (the “Effective Date”), is entered into between Penn State Health, on behalf of itself and all of its affiliates (“Penn State Health”), and _____ (“Outside Entity”), a licensed health care provider. Penn State Health and Outside Entity are sometimes referred to in this Agreement individually as a “Party” and, collectively, as the “Parties.”

RECITALS

- A. Penn State Health utilizes certain systems, known collectively as EpicCare Link (“EpicCare”), which allow users to remotely access patient electronic health records among Penn State Health hospitals, other health care providers affiliated with Penn State Health, physicians and physician practices with medical staff privileges at, or otherwise affiliated with, Penn State Health hospitals, and other providers of health care items and services within and around the Penn State Health service areas (collectively, the “Providers”);
- B. Penn State Health believes that the use of EHR technology by Outside Entity would substantially improve the quality of health care, and would therefore like to allow access to EpicCare by Outside Entity, subject to the restrictions and other requirements set forth in this Agreement; and
- C. Outside Entity either: (i) provides professional or other medical services to Penn State Health patients; or (ii) is a Business Associate of Penn State Health but does not have a contract with Penn State Health for access to the EHR, and Outside Entity agrees to use EpicCare to improve the quality and efficiency of services provided by Outside Entity to Penn State Health and their respective patientsd

NOW, THEREFORE, the Parties agree as follows:

1. EpicCare Link.

1.1 Access to EpicCare. Subject to the terms and conditions of this Agreement, Penn State Health hereby grants Outside Entity non-transferable and non-exclusive access to EpicCare to permit the Authorized Users (as that term is defined in Section 1.2) to electronically access and use EpicCare solely for storing, processing, and displaying EHR and other information, images and content related to patients whose information may be accessed pursuant to HIPAA by Outside Entity (the “System License”). Outside Entity understands and warrants that such access and use shall be limited to that achieved through unique access codes provided to each Authorized User by Penn State Health, and that each Authorized User shall be prohibited from using another Authorized User’s access code to access and/or use EpicCare. Penn State Health may terminate individual Authorized Users’ access and/or the entire System License at any time, for any reason, or no reason whatsoever, without penalty; regardless of any effect such termination may have on Outside Entity’s operations.

1.2 Medical Providers & Authorized Users.

- (a) Outside Entity shall ensure that only those medical providers, including, without limitation, physicians, dentists, nurse practitioners, certified nurse anesthetists, midwives, audiologists, nutritionists, dieticians, occupational therapists, optometrists, physical therapists, physician assistants, podiatrists, psychologists, social workers, speech therapists and surgical technicians (each a “Medical Provider”) and those registered nurses, licensed practical nurses, medical assistants, and other administrative staff employed by or contracting with Outside Entity are authorized by Outside Entity to use and access the EpicCare (each, together with Medical Providers, an “Authorized User” and, collectively, the “Authorized Users”). Outside Entity shall maintain a list of all Authorized Users and shall provide such list to Penn State Health upon request. Penn State Health shall have the right to reject an

Authorized User or suspend or terminate an Authorized User's access to EpicCare at any time, for any reason, or no reason whatsoever, without penalty; regardless of any effect such termination may have on Outside Entity's operations.

- (b) Outside Entity shall ensure that each Authorized User signs a request form attached to this Agreement as Exhibit 1 agreeing to be bound by the EpicCare terms and conditions of use (the "EpicCare Terms and Conditions"). Outside Entity shall require at all times while this Agreement is in effect that each Authorized User: (i) has completed appropriate and thorough training on the requirements of HIPAA and other applicable state and federal laws; (ii) does not share or otherwise disclose his or her login information or access to EpicCare with any other individual or entity; (iii) has never have been excluded, suspended or made otherwise ineligible to participate in the Medicare or Medicaid programs, or any other federal health care program, as defined at 42 U.S.C. § 1320a-7b(f) ("Federal Health Care Program"); and (iv) has never been convicted of or plead guilty or no contest to: (A) a felony; or (B) a misdemeanor involving forgery, credit card fraud, bank fraud, or identity theft.

1.3 Equipment Responsibility. Outside Entity acknowledges and agrees that any hardware, software, network access or other components necessary for Outside Entity to access and use EpicCare must be obtained separately by Outside Entity. Penn State Health is not responsible for the procurement, installation or maintenance of any necessary components, and Penn State Health makes no representations or warranties regarding the components whatsoever, including, without limitation, the compatibility of the EpicCare with such components. Any fees for the components shall be borne by solely Outside Entity and paid directly to the suppliers of the components.

1.4 Requesting System Access.

- (a) Outside Entity shall provide Penn State Health with the name and direct contact information for its Privacy Officer or similar official, and shall notify Penn State Health of any change in such contact. Outside Entity shall also designate a liaison to coordinate Authorized User access (which person may also be the Privacy Officer). The liaison is responsible for managing the modification and termination of Authorized User accounts that Outside Entity is provided. Before accessing EpicCare, each Authorized User must accept the EpicCare Terms and Conditions as may be amended from time to time. Outside Entity shall ensure that each Authorized User complies with the requirements of this Agreement and the EpicCare Terms and Conditions. Outside Entity shall require each Authorized User to complete training regarding EpicCare and the requirements of HIPAA and other applicable state and federal laws as they pertain to EpicCare access. Confirmation of each Authorized User's completion of training must be furnished to the Penn State Health upon request.
- (b) Access to EpicCare will be permitted only for such workforce of Outside Entity who have a reasonable need to access PHI pertaining to Penn State Health patients for the purposes of providing treatment to such patients. Outside Entity shall notify Penn State Health immediately when any Authorized User is separated from the employment of Outside Entity for any reason, and shall notify Penn State Health within twenty-four (24) hours of any additions or other modifications of Authorized Users. Outside Entity further agrees, on each anniversary of the Effective Date, to validate that the Authorized Users continue to require access to EpicCare.

2. **Use or Disclosure of Protected Health Information.**

2.1 Safeguarding of Information. Outside Entity agrees that it will implement all appropriate safeguards to prevent unauthorized use or disclosure of protected health information (as that term is defined by HIPAA) ("PHI"). Outside Entity agrees to comply with all federal and state laws and regulations regarding privacy, security, and electronic exchange of health information, as currently enacted or amended in the future. Outside Entity shall not use or disclose PHI received from Penn State Health in any manner that would constitute a violation of federal or state law, including, but not limited to, HIPAA. Outside Entity shall ensure that its Authorized Users,

directors, officers, employees, contractors, and agents use or disclose PHI received from, or created or received on behalf of Penn State Health only in accordance with the provisions of this Agreement and federal and state law. Outside Entity further agrees that all information accessed through EpicCare will be maintained in the strictest confidentiality and in the same manner as Outside Entity safeguards the confidentiality of other patient care records, or as required by state and federal law.

- 2.2 Covered Entity Status. If Outside Entity is a Covered Entity (as that term is defined by HIPAA) Penn State Health and Outside Entity shall comply in all material respects with the standards for privacy established for Covered Entities by HIPAA.

3. Reporting Unauthorized Use or Disclosure of PHI.

- 3.1 Notice to Penn State Health. Within twenty-four (24) hours of it becoming aware of an unauthorized use or disclosure of PHI by Outside Entity, including, without limitation, its officers, directors, employees, contractors, agents, or third-parties to which Outside Entity disclosed PHI, Outside Entity shall report such disclosure to Penn State Health. Such notice shall be made to:

PSH HIM Document Management
P.O. Box 850
Mail Code: CA700
Hershey, PA 17033
(717) 531-6257

PSH Privacy Office;
P.O. Box 850, Mail Code: CA133
Hershey, PA 17033
(717) 531-2081

Notice by email: Privacy@pennstatehealth.psu.edu

- 3.2 Potential Data Security Breach. If Outside Entity, at any time, has reason to believe that PHI transmitted pursuant to this Agreement, may have been accessed or disclosed without proper authorization and contrary to the terms of this Agreement, Outside Entity shall immediately notify Penn State Health and take actions to eliminate the cause of the breach. To the extent Penn State Health deems warranted, in its sole discretion, Penn State Health will provide notice, or require Outside Entity to provide notice, to individuals whose PHI may have been improperly accessed or disclosed.
- 3.3 Compliance Audits. Penn State Health may perform audits and other investigations from time to time of Outside Entity's and Authorized Users' compliance with the terms and conditions of this Agreement (including compliance with applicable law). Outside entity shall permit and cooperate with Penn State Health, and shall cause Authorized Users to permit and cooperate with Penn State Health, in performing any such audits or investigations to ensure Outside Entity's and Authorized Users' ongoing compliance with the terms and conditions of this Agreement (including compliance with applicable law).
- 3.4 Disciplinary Action. In the event that Penn State Health identifies failures to comply with this Agreement by Outside Entity or an Authorized User, Penn State Health may impose appropriate nonmonetary disciplinary actions. Disciplinary actions may include, without limitation, the termination of this Agreement (i.e. termination of Outside Entity's access to EpicCare), the termination of an individual Authorized User's access to EpicCare, and/or the termination of an Authorized User's Penn State Health Medical Staff membership(s) or other association, as applicable. Penn State Health reserves the right to report illegal, inappropriate, or unprofessional conduct to appropriate licensing or other regulatory authorities. Outside Entity shall cooperate with Penn State Health in order to adequately investigate complaints received involving the Authorized Users or any other workforce or agents of Outside Entity. Outside Entity shall

implement and maintain sanctions policy, produce it upon request, and discipline its workforce or agents for any breach of this Agreement or the EpicCare Terms and Conditions. Outside Entity's failure to comply with this Section 3.4 may result in the immediate termination of this Agreement and associated access to EpicCare.

4. Third Party Access.

Outside Entity shall obtain the written approval of Penn State Health before allowing any contractor, subcontractor, agent or other third-party of Outside Entity to access PHI that is created or received on behalf of Penn State Health through EpicCare. In the event that Penn State Health consents to such third-party access on a case-by-case basis, Outside Entity shall ensure that the third-party agrees to be bound by the same restrictions, terms and conditions that apply to Outside Entity through this Agreement. Outside Entity shall require that any third-party notify Outside Entity of any instances in which PHI is used or disclosed in an unauthorized manner. For the purposes of this Agreement, any unauthorized or impermissible use or disclosure of PHI by any third-party of Outside Entity will be treated as if such use or disclosure were caused by Outside Entity itself. To the extent permitted by law, Outside Entity will be fully responsible for the acts and omissions of any third-party that Outside Entity allowed to access PHI that is created or received on behalf of Penn State Health through EpicCare.

5. Responsibility for Medical Decisions.

Outside Entity and Authorized Users acknowledge and agree that the provision of EpicCare is not intended to, and shall not be deemed in any way to, eliminate, replace or substitute for, in whole or in part, the medical judgment of Outside Entity or Authorized Users, or the analysis or treatment of any patient's medical condition. Outside Entity has the sole and exclusive responsibility for any medical decisions made or actions taken by Outside Entity, Authorized Users, or any other employees, independent contractors or other personnel of Outside Entity or any Authorized User with respect to a patient's medical care and treatment.

6. Termination.

6.1 Without Cause. Either Party may terminate this Agreement by providing the other Party with written notice of such termination at least fourteen (14) days prior to the effective date of termination.

6.2 Immediately upon Breach. Penn State Health may terminate this Agreement immediately, without liability for such termination, in the event that Penn State Health determines that Outside Entity, including, without limitation, its Authorized Users, directors, officers, employees, contractors or agents, has breached an obligation under this Agreement.

7. Disclaimer.

PENN STATE HEALTH MAKES NO WARRANTIES, EITHER EXPRESS OR IMPLIED, GUARANTEES, OR CONDITIONS AS TO EPICARE OR ANY OTHER ITEMS OR SERVICES USED IN CONNECTION WITH EPICARE OR THIS AGREEMENT. PENN STATE HEALTH IS PROVIDING EPICARE "AS IS" AND "AS AVAILABLE," WITH ALL FAULTS AND DISCLAIMS ALL EXPRESS AND IMPLIED WARRANTIES, GUARANTEES OR CONDITIONS, INCLUDING ALL EXPRESS OR IMPLIED WARRANTIES REGARDING THE CONDITION, MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, SATISFACTORY QUALITY, PERFORMANCE, TITLE OR NON- INFRINGEMENT, AND ANY OTHER WARRANTY, GUARANTY, OR CONDITION THAT MIGHT OTHERWISE ARISE FROM COURSE OF DEALING OR USAGE OF TRADE FOR EPICARE OR ANY ITEMS OR SERVICES USED IN CONNECTION WITH EPICARE OR THIS AGREEMENT. PENN STATE HEALTH DOES NOT WARRANT THAT ANY ITEMS OR SERVICES PROVIDED PURSUANT TO THIS AGREEMENT WILL: (I) AVAILABLE AT ALL TIMES; (II) MEET OUTSIDE ENTITY'S BUSINESS REQUIREMENTS OR WILL OPERATE IN A PARTICULAR COMPUTER ENVIRONMENT, (II) BE ACCURATE OR ERROR FREE, WITH ERRORS THAT CAN BE CORRECTED; (III) BE UNINTERRUPTED AND FREE FROM DOWNTIME, SERVICE DISRUPTIONS, INTENTIONAL OR INADVERTENT INTRUSIONS, VIRUSES, WORMS OR OTHER

MECHANISMS THAT MAY HARM COMPUTERS OR COMPUTER NETWORKS , OR (IV) . ANY AFFIRMATION OF FACT OR PROMISES MADE BY PENN STATE HEALTH SHALL NOT BE DEEMED TO CREATE AN EXPRESS WARRANTY THAT THE SYSTEM SHALL CONFORM TO SUCH AFFIRMATION OR PROMISE

8. Limitation on Liability.

NEITHER PENN STATE HEALTH NOR ANY OF ITS AFFILIATES SHALL HAVE ANY LIABILITY FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING LOSS OF PROFITS, LOSS OF GOODWILL OR INTERRUPTION OF BUSINESS) RESULTING FROM, ARISING OUT OF OR IN CONNECTION WITH THE USE OR INABILITY TO USE OR THE PERFORMANCE OR NONPERFORMANCE OF EPICARE OR ANY ITEMS OR SERVICES PROVIDED UNDER OR IN CONNECTION WITH THIS AGREEMENT, EVEN IF THEY HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES, AND WHETHER SUCH LIABILITY IS BASED ON CONTRACT, TORT, STATUTES, NEGLIGENCE, STRICT LIABILITY, PRODUCTS LIABILITY, INDEMNIFICATION OR OTHERWISE. THE LIMITATIONS OF LIABILITY AND DISCLAIMERS OF WARRANTY STATED IN THIS AGREEMENT FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES.

9. Ownership of Data.

Outside Entity acknowledges and agrees that Penn State Health owns all rights, interests and title in and to its data and that such rights, interests and title shall remain vested in Penn State Health at all times. Outside Entity shall not compile and/or distribute analyses to third-parties utilizing any data received from or created or received on behalf of Penn State Health without express written permission from Penn State Health.

10. Indemnification.

Outside Entity agrees to indemnify and hold harmless Penn State Health and its affiliates, including, without limitation, their respective governing boards, officers, directors, attorneys, employees, contractors and agents, from and against any and all claims, costs, losses, damages, liabilities, expenses, demands, fines, and judgments, including litigation expenses and attorney's fees, which may arise from or are in any way related to Outside Entity's performance under this Agreement or acts or omissions of its contractors, subcontractors, employees, or agents, , including, but not limited to, any penalties, claims or damages arising from or pertaining to a breach of this Agreement, inappropriate use of EpicCare by Outside Entity, any Authorized User, or any person other than an Authorized User that Outside Entity permits or reasonably fails to prevent from accessing EpicCare in accordance with this Agreement, or the violation of any state or federal law applicable to the use, disclosure or protection of PHI subject to this Agreement. Such indemnification shall include but shall not be limited to the full cost of any required notice to impacted individuals, including the costs to retain an outside consulting firm, vendor or outside attorneys to undertake the effort.

11. Referrals.

Outside Entity and each Authorized User may refer patients to any hospital or other health care facility or provider deemed by Outside Entity or such Authorized User qualified to deliver medical services to any particular patient. Nothing in this Agreement is intended to require or induce Outside Entity or any Authorized User to refer patients to any Penn State Health hospital or affiliate, or generate any other business among Outside Entity, Authorized User and/or Penn State Health.

12. Insurance.

While this Agreement is in effect, Outside Entity, at its sole cost and expense shall maintain a policy commercial general liability insurance on an occurrence basis in the minimum amount of \$1,000,000. Such liability insurance coverage must include "cyber liability" insurance coverage.

13. Entire Agreement; Amendment.

This Agreement constitutes the entire understanding relating to the subject matter hereof between the Parties. This Agreement may not be amended except in a writing duly executed by the Parties.

14. Compliance with Law.

Penn State Health and Outside Entity shall continuously comply, and Outside Entity shall ensure that all Authorized Users continuously comply with HIPAA, the Health Information Technology for Economic and Clinical Health Act (Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009) and the regulations promulgated thereto, any state or federal laws and regulations applicable to Penn State Health, Outside Entity, or any Authorized User, in each case, as modified or amended from time to time; and any other applicable laws.

15. Independent Contractors.

The Parties are and shall at all times be independent contractors with respect to the performance of their respective obligations under this Agreement. Nothing in this Agreement shall be construed to create an employer/employee, lease or joint venture relationship between or among any of the Parties or between Penn State Health or any of its affiliates and any Authorized User.

16. Waiver of Breach.

The waiver by any Party of a breach or violation of any provision of this Agreement shall not operate as or be construed to be a waiver of any subsequent breach or violation of this Agreement.

17. Governing Law; Venue.

This Agreement shall be governed in all respects by the laws of the Commonwealth of Pennsylvania, without regard to its conflict of laws principles that might make the law of some other jurisdiction applicable. The Federal Court of the Middle District of Pennsylvania, or the State Court of Common Pleas for Dauphin County shall have the exclusive jurisdiction and venue for any dispute relating to this Agreement. The Parties hereby consent to and waive all objections to the jurisdiction, venue and forum non convenience of such courts.

18. Severability.

In the event that any provision of this Agreement is found to be invalid, void or unenforceable, the validity or enforceability of any other provision shall not be affected.

19. Assignment; Successors and Assigns.

This Agreement may not be assigned by Outside Entity without the prior written consent of Penn State Health. The provisions of this Agreement and obligations arising hereunder will extend to be binding upon and inure to the benefit of the Parties and their respective assigns and successors in interest.

20. Notices.

Any notice or other communication required by this Agreement to be in writing shall be deemed given when delivered either personally or by registered or certified mail, return receipt requested, or delivered by a reputable courier or delivery service, such as Federal Express, which can provide confirmation of delivery or refusal to the address most recently used by the receiving Party in its ordinary course business dealings with the sending Party in accordance with this Agreement (e.g., the address where invoices are sent, and checks submitted).

21. Trademarks.

Outside Entity shall not use, transfer or otherwise convey the name, trade name, trademarks, service marks, logos or other registered designs of the Penn State Health or any of its affiliates or subsidiaries in any form or manner, without the prior written consent of Penn State Health.

22. Electronic Signatures; Counterparts.

This Agreement may be electronically executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the Effective Date.

PENN STATE HEALTH	OUTSIDE ENTITY
By: _____	By: _____
(Print name): _____	(Print name): _____
Title: _____	Title: _____
Date: _____	Date: _____

Exhibit 1

Form of EpicCare Access Request Form

I, _____, confirm and agree that (1) I have read and understand the EpicCare Link Access Agreement between _____ (the "Practice") and Penn State Health (the "Agreement"); (2) I am an Authorized User (as defined in the Agreement) of the Practice; (3) I will comply with the terms of the Agreement and the EpicCare terms and conditions; (4) I will not share, disclose or allow any third party to utilize my EpicCare credentials, including my username and password; and (5) I will access only the information minimally necessary to fulfill my duties as an Authorized User.

By: _____ Date: _____
Authorized User