

## THIRD PARTY PAYER ACCESS TO ELECTRONIC HEALTH RECORDS

THIS AGREEMENT (“Agreement”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between **CHI Health** (“Healthcare Organization”), and \_\_\_\_\_ (“Third Party Payer”).

### RECITALS

A. Healthcare Organization provides health care to patients in its community located in Iowa and Nebraska and utilizes information technology for maintenance of electronic health records; and

B. Third Party Payer, located in \_\_\_\_\_, provides healthcare coverage to patients in the community of Healthcare Organization.

C. Third Party Payer and Healthcare Organization are Covered Entities as defined by the Health Insurance Portability and Accessibility Act of 1996 (“HIPAA”); and

D. Third Party Payer and Healthcare Organization intend to protect the privacy and provide for the security of protected health information pursuant to HIPAA, the Health Information Technology for Economic and Clinical Health Act (the “HITECH Act”), and the regulations promulgated thereunder, and as may be amended from time to time (collectively, the “Privacy and Security Regulations”); and

E. Third Party Payer and Healthcare Organization desire to provide access to electronic health records necessary and used solely to enhance the continuum of health care to mutual patients of Healthcare Organization and Third Party Payer.

### AGREEMENT

#### 1. DEFINITIONS

1.1 **Breach** means the unauthorized acquisition, access, use, or disclosure of protected health information not permitted by the Privacy and Security Regulations which compromises the security, privacy, or integrity of protected health information.

1.2 **Third Party Payer** means an entity that reimburses and manages health care expenses, this includes insurance companies, governmental agencies, and employers and their employees.

1.3 **Disclose** and **Disclosure** mean, with respect to protected health information, the release, transfer, provision of, access to, or divulging in any other manner of protected health information outside Healthcare Organization’s internal operations.

1.4 **Electronic Health Record** (“EHR”) means a repository of consumer health status information in computer processable form used for clinical diagnosis and treatment for a broad array of clinical conditions. EHRs contain protected health information.

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1.5 **Electronic Protected Health Information** or **Electronic PHI** means protected health information that is transmitted by electronic media (as defined by the Privacy and Security Regulations) or is maintained in electronic media. Electronic PHI may be transmitted and maintained on devices such as cell phones, PDAs, text pagers, and USB static discs.

1.6 **Information Technology** (“IT”) for purposes of obtaining access to Healthcare Organization’s EHR includes by way of example: rights, licenses, and intellectual property related to the EHR software; connectivity services, including broadband and wireless internet services; portals; secure messaging capabilities and related services that are used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, or transmission or reception of data or information in any electronic medium to any source. IT for purposes of EHR does not include hardware, including routers or modems necessary to access or enhance connectivity, and operating software that makes the hardware function; storage devices; software with core functionality other than EHR (such as human resources or payroll software or software packages for practice management or billing); or items used to conduct personal business or business unrelated to clinical practice.

1.7 **Protected Health Information** (“PHI”) means information, including demographic information, that (i) relates to the past, present, or future physical or mental health or condition of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual; (ii) identifies the individual (or for which there is a reasonable basis for believing that the information can be used to identify the individual); and (iii) is received by Third Party Payer from or on behalf of Healthcare Organization, or is created by Healthcare Organization, or is made accessible to Third Party Payer by Healthcare Organization. PHI may be contained in other mediums including without limitation, Electronic PHI, EHR, paper records, audio, and video recording.

1.8 **Unsecured PHI** means PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through use of a technology or methodology specified in guidance by the Secretary of the U. S. Department of Health and Human Services, or his designee.

1.9 **Use or Uses** means, with respect to PHI, the sharing, employment, application, utilization, examination or analysis of such PHI within Healthcare Organization’s internal operations.

1.10 Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the Privacy and Security Regulations.

## **2. HEALTHCARE ORGANIZATION OBLIGATIONS**

**Access.** Healthcare Organization will provide Third Party Payer with access to Healthcare Organization EHR subject to licensing agreement with IT vendors, and Third Party Payer’s compliance with this Agreement.

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2.2 **Electronic Communication.** Third Party Payer is responsible for its installation, operation, and ongoing maintenance of IT hardware associated with communications between Third Party Payer's IT system and Healthcare Organization's IT system.

2.3 **Training and Support.** At times and manner convenient to Healthcare Organization, Healthcare Organization will provide Third Party Payer training for remote access to Healthcare Organization EHR. Healthcare Organization will not provide any support for hardware owned or used by Third Party Payer.

### **3. THIRD PARTY PAYER OBLIGATION.**

3.1 **Permitted Use.** Third Party Payer may access EHR that is necessary and used solely for the ongoing review of Third Party Payer's clients. Third Party Payer shall not use Healthcare Organization IT system for any other purpose.

#### **3.2 Application for Use.**

3.2.1 Third Party Payer will complete the application to access EHR (EXHIBIT A) and provide a list of Third Party Payer's staff requesting access to Healthcare Organization's EHR.

3.2.2 Third Party Payer will obtain a signed Access User and Confidentiality Agreement (EXHIBIT B) from each individual requesting access and provide the agreements to Healthcare Organization. Third Party Payer will provide Healthcare Organization with an alphabetized list of users and signed Access User and Confidentiality Agreements on an annual basis and at other times as may be requested by Healthcare Organization.

3.3 **Compliance.** Third Party Payer is responsible for ensuring compliance with the terms and conditions of this Agreement. Third Party Payer acknowledges that its acts or omissions concerning EHR or use of Healthcare Organization IT system in any way that is not permitted by this Agreement is considered a breach of this Agreement.

3.4 **Notice of Discontinuance of Access.** Third Party Payer will notify Healthcare Organization immediately without delay, but no more than three business days of the departure of Third Party Payer's staff who has access to Healthcare Organization's EHR, so that Healthcare Organization may discontinue such access.

3.5 **Audits.** Healthcare Organization routinely conducts random and targeted audits of access to Healthcare Organization's IT system and EHR. Third Party Payer agrees to cooperate with Healthcare Organization audits and any resulting investigation that may involve Third Party Payer's access.

3.6 **Maintenance of Information Technology.** Third Party Payer warrants that it shall implement and maintain appropriate safeguards to prevent the Use or Disclosure of PHI in any manner other than as permitted by this Agreement. Third Party Payer warrants that it shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of Healthcare Organization IT system, EHR,

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and PHI that it receives, maintains, or transmits from Healthcare Organization as required by law. Third Party Payer shall protect Healthcare Organization IT system from viruses and similar program threats and manage logging and other data collection mechanisms.

3.7 **Training.** Third Party Payer is responsible for HIPAA training and education, including appropriate access to EHR and terms in the Access User Agreement. Third Party Payer will provide evidence of training and education of its staff upon Healthcare Organization request.

3.8 **Reporting Breaches.** Third Party Payer shall report to Healthcare Organization each Breach that is made by Third Party Payer that is not specifically permitted by this Agreement. Third Party Payer shall report to Healthcare Organization any security incident of which it becomes aware. For purposes of this Agreement, "Security Incident" means the attempted or successful unauthorized access, use or disclosure, modification, or destruction of information, or interference with the system operations in Healthcare Organization IT system.

Third Party Payer shall notify Healthcare Organization's Privacy Official by telephone call immediately following the first day on which Third Party Payer knows of such Breach.

Third Party Payer shall provide a full written report to Healthcare Organization's Privacy Official within five (5) days of verbal notice. Third Party Payer shall include the following in the written report: Detailed information about the Breach, immediate remedial action to stop the Breach, and names and contact information of individuals whose PHI has been or is reasonably believed to have been subject to the Breach.

For reference purposes, as of the date of this Agreement, CHI Health's Privacy Officer is **Tracey Craig**, telephone number **602-407-3929**.

3.9 **Confidentiality.** Third Party Payer shall only access Healthcare Organization IT system and EHR as provided in this Agreement. Third Party Payer's use of and access to EHR is limited to Third Party Payer's relationship with mutual patients of Healthcare Organization and Third Party Payer. Third Party Payer agrees that no other person or entity shall have access to, publish, or pass on Third Party Payer's password to access Healthcare Organization IT system and EHR, whether in electronic, print, or other form. Third Party Payer's unauthorized distribution of Third Party Payer's password, or information accessed from Healthcare Organization IT system shall result in immediate termination of this Agreement, and may subject Third Party Payer physician or practitioner to loss of privileges with Healthcare Organization and any other action and remedies available to Healthcare Organization under law or equity.

3.10 **Remedies in Event of Breach.** Third Party Payer recognizes that irreparable harm will result to Healthcare Organization in the event of Breach by Third Party Payer of any of the covenants and assurances contained in this Agreement. As such, in the event of a Breach, Healthcare Organization shall be entitled to enjoin and restrain Third Party Payer from any continued violation of this Agreement. Furthermore, Third Party Payer will reimburse and indemnify Healthcare Organization expenses and costs that are reasonably incurred associated with notification of individuals, media, and credit monitoring, as a result of Third Party Payer's Breach. The remedies contained in this section shall be in addition to any action for damages

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and/or any other remedy Healthcare Organization may have for breach of any part of this Agreement.

3.11 **Indemnity.** Third Party Payer shall indemnify, defend and hold harmless, Healthcare Organization and its affiliates, and their respective members, trustees, officers, directors, employees, and agents, from and against any claim, cause of action, liability, damage, fine, penalty, cost, or expense, including, without limitation, reasonable attorneys' fees and costs arising out of or in connection with any Breach of PHI or any other breach of this Agreement by Third Party Payer.

### 4. MUTUAL OBLIGATIONS

4.1 **No Referral Obligation.** Nothing herein shall be construed to require Third Party Payer to refer patients to Healthcare Organization or to require Healthcare Organization to refer patients to Third Party Payer.

#### 4.2 Term and Termination.

4.2.1 This Agreement shall be for a term of one year. Unless otherwise terminated earlier, this Agreement shall automatically renew for successive one-year terms.

4.2.2 Either party may terminate this Agreement by providing thirty days written notice to the other party of its intent to terminate.

4.2.3 This Agreement shall automatically terminate upon the termination of all other contractual arrangements between the Third-Party Payer and Healthcare Organization.

4.2.4 Healthcare Organization may, in its sole discretion, immediately terminate this Agreement upon Third Party Payer's Breach or imminent Breach.

4.3 **Assignability.** Except as otherwise expressly provided in this Agreement, Third Party Payer may not assign any of its rights or obligations under this Agreement.

4.4 **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the States of Iowa and Nebraska applicable to agreements made and to be performed wholly within that state, irrespective of such state's choice-of-law principles.

4.5 **Insurance.** Each party shall maintain for its respective business, at its sole expense, policies of property, general liability and professional liability insurance, in an amount considered adequate for such businesses. Such policies shall insure against any claim or claims for damages arising directly or indirectly in connection with the acts or omissions of the respective party, its agents or employees pursuant to performance under this Agreement. Each party shall provide, upon request of the other party, applicable and valid certificates of insurance for any of the aforementioned policies.

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**5. Authority To Sign On Behalf Of Third Party Payer**

Any entity signing this Agreement on behalf of any other entity hereby represents and warrants in its individual capacity that it has full authority to do so on behalf of the other entity. Any individual signing this Agreement on behalf of an entity hereby represents and warrants in his individual capacity that he has full authority to do so on behalf of such entity.

**IN WITNESS WHEREOF**, the parties hereto have duly executed this Agreement, effective the date first above written.

**CHI Health**

**ORGANIZATION:**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

By: Steven Leitch, MD

By: \_\_\_\_\_

Its: Divisional VP, Clinical Informatics

Its: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**THIRD PARTY PAYER ACCESS TO ELECTRONIC HEALTH RECORDS**

**EXHIBIT A**

**APPLICATION TO ACCESS ELECTRONIC HEALTH RECORDS  
FROM  
CHI HEALTH**

<https://www.cognitoforms.com/CHIHealth/PayerAgreement>

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**EXHIBIT B**

**ELECTRONIC HEALTH RECORD  
ACCESS USER AND CONFIDENTIALITY AGREEMENT  
WITH CHI HEALTH**

<https://www.cognitofrms.com/CHIHealth/PayerSiteAdministratorRequest>

<https://www.cognitofrms.com/CHIHealth/PayerUserRequest>