

ACCESS TO ELECTRONIC HEALTH RECORDS FOR CLINICS/ORGANIZATIONS

THIS AGREEMENT (“Agreement”) is made and entered into this _____ day of _____, 20_____, by and between CHI Memorial (“Hospital”) and _____ (“Organization”).

RECITALS

A. The Hospital provides health care to patients in its community located in Tennessee and Georgia and utilizes information technology for maintenance of electronic health records; and

B. Organization, located in _____ [insert city, state], provides health care to patients in the community of Hospital.

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

D. Organization and Hospital intend to protect the privacy and provide for the security of protected health information pursuant to federal law, including but not limited to HIPAA, the Health Information Technology for Economic and Clinical Health Act (the “HITECH Act”), the regulations promulgated thereunder, as may be amended from time to time, and any other applicable law (collectively, the “Privacy and Security Regulations”); and

E. Organization and Hospital desire to provide access to and share electronic health records for treatment, payment and operations purposes, in order to enhance the continuum of health care to mutual patients of Hospital and Organization (the “Purpose”).

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 **Organization** means a physician, practitioner, health care provider, group practice, partnership, or corporation of physicians and/or practitioners, health care providers, and its 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 of the entity that maintains the information.

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

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 Hospital 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 Organization 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 Organization from or on behalf of Hospital, or is created by Organization, or is made accessible to Organization by Hospital. 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 the entity that maintains the information.

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. HOSPITAL OBLIGATIONS

2.1 **Access.** Hospital will provide Organization with access to Hospital EHR subject to licensing agreement with IT vendors, and Organization's compliance with this Agreement.

2.2 **Electronic Communication.** Hospital may elect to assist Organization by providing necessary link to enable Organization to access PHI in the Hospital system. Nonetheless, Organization is responsible for its installation, operation, and ongoing maintenance of IT hardware associated with communications between Organization's IT system and Hospital's IT system.

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

3. ORGANIZATION OBLIGATION.

3.1 **Permitted Use.** Organization may use Hospital IT system to access patient information that is necessary and used solely for the Purpose. Organization shall not use Hospital IT system for any other purpose.

3.2 Application for Use.

3.2.1 Organization will complete the application to access EHR (EXHIBIT A) and provide a list of Organization's staff requesting access to Hospital's EHR. To the extent applicable, Organization will identify the Site Administrator responsible for managing a list of users with such access. (EXHIBIT C)

3.2.2 Organization will obtain a signed Access User and Confidentiality Agreement (EXHIBIT B) from each individual requesting access and provide the agreements to Hospital. Organization will provide Hospital with list of users and signed copies of Access User and Confidentiality Agreements when required by Hospital. Organization agrees that any access to Hospital's internal network or other Information Technology assets is subject to CommonSpirit's Data Asset Usage Policy (IT A-002) governing acceptable use of its IT resources, available upon request.

3.3 **Compliance.** Organization is responsible for ensuring compliance with the terms and conditions of this Agreement. Organization acknowledges that its acts or omissions concerning EHR or use of Hospital 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.** Organization will notify Hospital within three business days of the departure of Organization's staff who has access to Hospital's EHR, so that Hospital may discontinue such access.

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

3.6 **Maintenance of Information Technology.** Organization 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. Organization warrants that it shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of Hospital IT system, EHR, and PHI that it receives, maintains, or transmits from Hospital as required by law. Organization shall protect Hospital IT system from viruses and similar program threats and manage logging and other data collection mechanisms.

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

3.8 **Reporting Breaches.** Organization shall report to Hospital each breach that is made by Organization that is not specifically permitted by this Agreement. Organization shall report to Hospital 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 Hospital IT system.

Organization shall notify Hospital's Privacy Official by telephone call on or before the day immediately following the first day on which Organization knows of such breach.

Organization shall provide a full written report to Hospital's Privacy Official within five (5) days of verbal notice. Organization 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, Hospital's Privacy Officer is Andrew Shine, telephone number 423-495-6797.

3.9 **Confidentiality.** Organization shall only access Hospital IT system and EHR as provided in this Agreement. Organization's use of and access to EHR is limited to Organization's treatment of mutual patients of Hospital and Organization. Organization agrees that no other person or entity shall have access to, publish, or pass on Organization's password to access Hospital IT system and EHR, whether in electronic, print, or other form. Unauthorized

distribution of Organization or its personnels' password, or information accessed from Hospital IT system, shall result in immediate termination of this Agreement and may subject Organization or associated end users or practitioners to loss of privileges with Hospital and any other action and remedies available to Hospital under law or equity.

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

3.11 **Indemnity.** Organization shall indemnify, defend and hold harmless, Hospital 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 Organization.

4. MUTUAL OBLIGATIONS

4.1 **No Referral Obligation.** Nothing herein shall be construed to require Organization to refer patients to Hospital or to require Hospital to refer patients to Organization.

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 when the relationship no longer exists between the Organization and Hospital.

4.2.4 Hospital may, in its sole discretion, immediately terminate this Agreement upon Organization's breach or imminent breach.

4.3 **Assignability.** Except as otherwise expressly provided in this Agreement, Organization 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 State of Tennessee and Georgia 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.

5. Authority to Sign On Behalf Of Organization

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.

HOSPITAL:

ORGANIZATION:

CHI Memorial

Org Name: _____

By: Thomas Coburn, MD

By: _____

Title: Chief Medical Information Officer

Title: _____

Date: _____

Date: _____

EXHIBIT A

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

<https://www.cognitofrms.com/CommonSpiritHRSupportServices/CHIMemorialEpicCareLinkAgreement>

EXHIBIT B

**ELECTRONIC HEALTH RECORD
ACCESS USER AND CONFIDENTIALITY AGREEMENT
WITH CHI MEMORIAL (“HOSPITAL”)**

<https://www.cognitofrms.com/CommonSpiritHRSupportServices/CHIMemorialEpicCareLinkSiteAdministratorRequest>

EXHIBIT C

**SITE ADMINISTRATOR AGREEMENT
HEALTHCARE ORGANIZATION - SITE ADMINISTRATOR REQUEST
WITH CHI MEMORIAL (“HOSPITAL”)**

<https://www.cognitofrms.com/CommonSpiritHRSupportServices/CHIMemorialEpicCareLinkUserRequest>