

Link2CHOP AGREEMENT

BETWEEN

THE CHILDREN'S HOSPITAL OF PHILADELPHIA

AND

THIS AGREEMENT ("Agreement") is entered into between THE CHILDREN'S HOSPITAL OF PHILADELPHIA ("CHOP") and ("Entity").

WHEREAS, CHOP utilizes certain systems which allow users to remotely access patient electronic health records ("Link2CHOP") among CHOP facilities, other health care providers affiliated with CHOP, physicians and physician practices with medical staff privileges at CHOP hospitals or another health care provider affiliated with CHOP and other providers of health care items and services in and around the mid-Atlantic area;

WHEREAS, Link2CHOP has the capacity to allow these parties to view electronic health records ("EHR") of their patients for the purpose of treatment and certain health care operations to the extent permitted without authorization by the Administrative Simplification subtitle of the Health Insurance Portability and Accountability Act of 1996, and the rules and regulations promulgated thereunder, as may be amended from time to time (collectively, "HIPAA"), and further subject to the American Recovery and Reinvestment Act of 2009 ("ARRA"), including its provisions commonly known as the "HITECH Act," and rules and regulations promulgated thereunder, as may be amended from time to time;

WHEREAS, CHOP believes that the use of Link2CHOP by Entity would substantially improve the quality of health care provided in and around the mid-Atlantic area, and therefore wishes to allow access to Link2CHOP by Entity, subject to the restrictions and other requirements set forth in this Agreement;

WHEREAS, Entity provides medical services to CHOP patients, but does not have a contract with CHOP for access to EHR; and

WHEREAS, Entity wishes to use Link2CHOP to improve the quality and efficiency of the medical services Entity provides to CHOP patients subject to the terms herein.

NOW, THEREFORE, in consideration of the promises, the mutual agreements and covenants herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound, do hereby agree as follows:

1. Link2CHOP Access.

A. Subject to the terms and conditions of this Agreement, CHOP hereby grants Entity non-transferable and non-exclusive access to Link2CHOP to permit the medical providers (each a "Medical Provider"), as

defined and set forth in [Exhibit A](#) attached hereto, and their office administrators, secretaries and nurses (collectively “Authorized Users”), to electronically access and use Link2CHOP solely for viewing and displaying medical records and other information, images and content related to the provision of healthcare to patients of such Medical Providers (the “System License”). Entity understands and warrants that such access and use shall be limited to that achieved through unique access codes provided to each individual authorized user by CHOP, and that each authorized user shall be prohibited from using another authorized user’s access code to access and/or use Link2CHOP.

B. Entity agrees to implement and utilize Link2CHOP. Entity acknowledges and agrees that any hardware, software, network access or other components necessary for Entity to access and use Link2CHOP must be obtained separately by Entity. CHOP shall not be responsible for the procurement, installation or maintenance of any necessary components, and CHOP makes no representations or warranties regarding the components whatsoever. Any fees for the components shall be borne by Entity and paid directly to the suppliers of the components.

2. Use or Disclosure of Protected Health Information (“PHI”).

A. Entity shall comply in all material respects with the standards for privacy of individually identifiable health information of the Administrative Simplification subtitle of HIPAA. Entity shall not use or disclose PHI received from CHOP in any manner that would constitute a violation of federal or state law, including, but not limited to, HIPAA. Entity shall ensure that its directors, officers, and employees, only access or use PHI received from CHOP only in accordance with the provisions of this Agreement and federal and state law. Entity shall not disclose PHI in any manner other than as permitted by this Agreement. Entity further agrees that all information accessed through Link2CHOP will be maintained in the strictest confidence and as required by state and federal law. Entity may include electronic or paper copies of medical records and other information, images and content obtained from CHOP using the System License in Entity’s medical records for its patients. Any subsequent disclosure of such information by Entity shall be from Entity’s medical record.

B. Entity shall use Link2CHOP in accordance with any network security policies issued by CHOP from time to time, including without limitation necessary training and certifications required by CHOP from time to time.

3. Process for Requesting System Access.

A. Entity shall provide CHOP with the name and direct contact information for its Privacy Officer, and shall notify CHOP of any change in such contact. Entity shall also designate a liaison to coordinate user access (which person can also be the Privacy Officer). The liaison is responsible for managing the modification and termination for accounts that Entity is provided, as well as the additional duties set forth on Exhibit B attached hereto and incorporated herein by reference. Before access to Link2CHOP, each Authorized User shall read and agree to (by selecting “Accept”) the terms of the online confidentiality statement (the “Confidentiality Statement”) in the form provided herein as Exhibit C, attached hereto and incorporated herein by reference, as that form may be amended from time to time. Entity agrees to ensure that each Authorized User approved for access under this Agreement adheres to

the requirements of this Agreement and the Confidentiality Statement. Each Authorized User shall also complete, in a form and in a manner to be determined by CHOP, training regarding the requirements of HIPAA as they pertain to Link2CHOP access, which shall be tracked by CHOP to ensure compliance.

B. For purposes of this Agreement, access to Link2CHOP shall be permitted only for such categories of physicians and employees of Entity who have a reasonable need to access PHI of CHOP patients for purposes of carrying out their treatment duties to such patients. The Authorized Users of Entity who shall have access to Link2CHOP are listed in Exhibit A of this Agreement, incorporated by reference herein. Entity agrees to notify CHOP within 24 hours when any Authorized User is separated from employment of Entity for any reason, including but not limited to termination or voluntary separation. Entity further agrees, on each anniversary date of this Agreement, to validate that the Authorized Users listed in Exhibit A continue to require access to Link2CHOP and continue to be employees or agents of Entity.

4. Safeguards Against Unauthorized Use or Disclosure of Information.

Entity agrees that it will implement all appropriate safeguards to prevent unauthorized access, use or disclosure of PHI from the Link2CHOP portal. 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 and take appropriate discipline and corrective action in response to violations by members of Entity's workforce as required by HIPAA. ENTITY IS REMINDED THAT CERTAIN INFORMATION, INCLUDING ALCOHOL AND DRUG ABUSE, MENTAL HEALTH, HIV/AIDS, OTHER SEXUALLY TRANSMITTED DISEASES, AND GENETIC INFORMATION, IS HIGHLY SENSITIVE AND MAY REQUIRE THE LEGAL CONSENT OF THE ADOLESCENT PATIENT PRIOR TO DISCLOSURE TO THE PATIENT'S PARENT OR LEGAL GUARDIAN.

5. Data Ownership.

Entity acknowledges and agrees that CHOP owns all rights, interests and title in and to CHOP's data and that such rights, interests and title shall remain vested in CHOP at all times. Entity shall not compile and/or distribute analyses to third parties utilizing any data, including de-identified data, received from, or created or received on behalf of CHOP without express written permission from CHOP.

6. Reporting of Unauthorized Use or Disclosure of PHI.

A. Entity shall, within 24 hours of becoming aware of any unauthorized access, use or disclosure of PHI by Entity, its physicians, employees, or any third party, report any such disclosure to CHOP. Such notice shall be made to Entity's CHOP liaison.

B. If at any time Entity has reason to believe that PHI accessed, disclosed, or transmitted pursuant to this Agreement may have been accessed or disclosed without proper authorization and contrary to the terms of this Agreement, Entity will immediately take actions to eliminate the cause of the breach. To the extent CHOP deems warranted, in its sole discretion, CHOP will provide notice or require Entity to provide notice to individuals whose PHI may have been improperly accessed or disclosed.

7. Third Party Access.

Entity shall obtain the written approval of CHOP prior to allowing any agent or subcontractor access to PHI through Link2CHOP. In the event that CHOP consents to such third party access on a case-by-case basis, Entity shall ensure that the agent or subcontractor agrees to be bound by the same restrictions, terms and conditions that apply to Entity through this Agreement. Entity shall require that any agent or subcontractor notify Entity of any instances in which PHI is used or disclosed in an unauthorized manner. Entity shall take steps to cure the breach of confidentiality and end the violation or shall terminate the agency agreement or subcontract. Entity shall be required to comply with Section 6 of this Agreement in the event of any breach by a third party.

8. Availability of Books and Records.

Entity agrees to make its internal practices, books and records relating to the use and disclosure of PHI received from CHOP, or created or received on behalf of CHOP, available to CHOP and to the Secretary of the U.S. Department of Health and Human Services for purposes of determining CHOP's and Entity's compliance with HIPAA standards. Entity promptly shall provide to CHOP a copy of any documentation that Entity provides to the Secretary.

9. Investigations/Sanctions.

CHOP has the right, at Entity's sole cost and expense, at any time, to monitor, audit, and review activities and methods in implementing this Agreement in order to assure compliance therewith. CHOP reserves the right to impose nonmonetary appropriate sanctions. Sanctions may include, but are not limited to, the termination of this Agreement, termination of Entity's access, or termination of individual Authorized User access. CHOP reserves the right to report unprofessional conduct to appropriate licensing or other regulatory authorities. Entity agrees to cooperate, and cause its Privacy Officer to cooperate, with CHOP in order to adequately investigate complaints received involving Entity's employees or agents. Entity agrees to have a sanctions policy, produce it upon request, and discipline their employees or agents for all breaches involving CHOP PHI in accordance with the HIPAA Privacy Rule.

10. Immediate Termination.

CHOP may terminate its participation in this Agreement immediately without liability for such termination, in the event CHOP determines that Entity, or Entity's directors, officers, employees, contractors or agents have violated a material provision of this Agreement. Entity further acknowledges and understands that CHOP may terminate individual Authorized Users' access and/or the entire System License at any time for any reason without penalty, regardless of any effect such termination may have on Entity's operations.

11. Indemnification.

Entity agrees to indemnify, defend and hold harmless CHOP, its trustees, officers, employees, medical and research staffs and agents, from and against any and all claims, costs, losses, damages, liabilities,

expenses, demands, and judgments, including litigation expenses and attorney's fees, which may arise from Entity's performance under this Agreement or any negligent or wrongful acts or omissions of Entity, its subcontractors, agents, or employees, including, but not limited to, any penalties, fines, claims or damages arising from or pertaining to a breach of 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 notice to impacted individuals, including the costs to retain an outside consulting firm, vendor or outside attorneys to undertake the effort, and the cost of any services provided to those whose PHI may have been disclosed.

12. Insurance

Entity will maintain insurance policies sufficient to protect against all applicable risks and shall provide evidence of insurance at CHOP's request.

13. Entire Agreement.

This Agreement constitutes the entire agreement between the parties regarding access to Link2CHOP, and supersedes all prior oral or written agreements, commitments, or understandings concerning the matters provided for herein.

14. Amendment.

This Agreement may be modified only by a subsequent written Agreement executed by the parties. The provisions in this Agreement may not be modified by any attachment, or letter agreement.

15. Governing Law.

The parties' rights or obligations under this Agreement will be construed in accordance with, and any claim or dispute relating thereto will be governed by, the laws of the Commonwealth of Pennsylvania.

16. Waiver.

Neither the waiver by any of the parties hereto of a breach of, or a default under any of the provisions of this Agreement, nor the failure of either of the parties, on one or more occasions, to enforce any of the provisions of this Agreement or to exercise any right or privilege hereunder, will thereafter be construed as a waiver of any subsequent breach or default of a similar nature, or as a waiver of any of such provisions, rights or privileges hereunder.

17. Use of Name or Logo.

Except in communications internal to the using party which are appropriately undertaken by such party in connection with the subject matter of this Agreement, neither party shall make use of the name, nickname, trademark, logo, service mark, trade dress or other name, term, mark or symbol identifying or associated with the other party without the prior written consent of the other party to the specific use in question.

18. Notices.

All notices which may be or are required to be given pursuant to this Agreement shall be in writing and shall be personally delivered, mailed by first-class, or certified mail, postage prepaid, and addressed, if to CHOP to Office of General Counsel, The Children’s Hospital of Philadelphia, 34th and Civic Center Boulevard, Philadelphia PA 19104, and if to Entity at the address of Entity reflected in CHOP’s records.

19. Disclaimer.

TO THE MAXIMUM EXTENT ALLOWED BY APPLICABLE LAW, CHOP DOES NOT WARRANT AND MAKES NO REPRESENTATIONS OF ANY KIND, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE ACCESS BEING PROVIDED. CHOP SHALL NOT BE LIABLE FOR ANY SPECIAL, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, WHETHER IN CONTRACT, WARRANTY, TORT, STRICT LIABILITY OR OTHERWISE.

20. Term.

This Agreement is effective on the date executed on behalf of CHOP, as indicated below and shall continue in effect until terminated, as set forth in this Agreement.

IN WITNESS WHEREOF, CHOP and Entity have caused this Agreement to be duly executed on the day and year first above written.

THE CHILDREN’S HOSPITAL OF PHILADELPHIA

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Exhibit B

Liaison/Privacy Officer Duties

- Assist CHOP in confirming that a treatment relationship exists between entity and patient for records viewed via First Access.
- Assist CHOP in investigating any potential unauthorized access or disclosure of PHI obtained from Link2CHOP portal by entity staff.
- Ensure the entity takes appropriate disciplinary and corrective action as required by HIPAA if staff at entity access or disclose information obtained from Link2CHOP for a purpose unrelated to the patient's treatment by the entity.
- Ensure all staff given access to Link2CHOP have received HIPAA privacy and security training from the entity regarding their responsibilities and the practices policies and any training required by CHOP.
- Where appropriate, coordinate with CHOP in providing written notification to patients in the event of a data breach involving Link2CHOP portal data and entity staff.

Exhibit C

Terms & Conditions of Use

The protection of health and other confidential information is a right protected by law and enforced by fines, criminal penalties as well as policy. Safeguarding protected health information is a fundamental obligation for all persons accessing it.

THE CHILDREN'S HOSPITAL OF PHILADELPHIA ("CHOP") takes the privacy and security of a patient's medical information very seriously. Use of Link2CHOP is conditioned on the user's compliance with CHOP's Policies and Procedures and with all federal and state law regarding the privacy and security of patient information such as HIPAA. Primarily, a user is allowed to access an individual patient's information on Link2CHOP when there is a physician-patient relationship resulting in (i) treatment to the patient; (ii) billing on behalf of the patient; or (iii) quality review as a result of providing care to the patient. Any unauthorized access to patient information through Link2CHOP is strictly prohibited. Unauthorized access may result in the user's termination of use of Link2CHOP and responsibility for any federal and state fines and penalties resulting from violating HIPAA. For users who are employed by the Entity, unauthorized access may result in corrective action up to and including termination.

YOU ARE REMINDED THAT CERTAIN INFORMATION, INCLUDING **ALCOHOL AND DRUG ABUSE, MENTAL HEALTH, HIV/AIDS, OTHER SEXUALLY TRANSMITTED DISEASES, AND GENETIC INFORMATION**, IS HIGHLY SENSITIVE AND MAY REQUIRE THE LEGAL CONSENT OF THE ADOLESCENT PATIENT PRIOR TO DISCLOSURE TO THE PATIENT'S PARENT OR LEGAL GUARDIAN.

Your clicking on "ACCEPT" at the end of this statement to activate your Link2CHOP account with CHOP will commit you to that obligation, and WILL be used as proof that you understand and agree to the stated basic duties and facts regarding patient privacy.

Read it carefully.

Clicking on "ACCEPT" indicates the following:

1. I agree to protect the privacy and security of confidential information I access through CHOP's electronic records at all times.
2. I agree to a) access confidential information to the minimum extent necessary for my assigned work duties of providing care to or supporting the care provided to the patient and b) disclose such information only to persons authorized to receive it.
3. I agree that I understand the following:
 - a. CHOP tracks all user IDs used to access electronic records. Those IDs enable discovery of inappropriate access to patient records.

b. Inappropriate access and/or unauthorized release of confidential or protected information obtained from the Link2CHOP portal will result in disciplinary action, up to and including termination of employment, and will result in a report to authorities charged with professional licensing, enforcement of privacy laws and prosecution of criminal acts. I further understand and agree that inappropriate access and/or unauthorized release of confidential or protected information may result in temporary and/or permanent termination of my access to CHOP electronic records. Inappropriate access includes: a) viewing a record of any patient for a purpose unrelated to treatment of the patient by the entity such as personal curiosity or medical research; and b) viewing records of family members, relatives, neighbors or friends for any reason unrelated to treatment of the patient by the Entity.

c. That I will be assigned a User ID & a one-time use activation code. I agree to immediately select and enter a new password known only to me. I understand I may change my password at any time, and will do so based on CHOP established policy and/or when prompted. I understand that I am to be the only individual using and in possession of my confidential password. I am aware that the User ID and password are equivalent to my signature. Also, I am aware that I am responsible for any use of the system utilizing my User ID and password. This includes data viewed, printed or otherwise manipulated. If I have reason to believe that my password has been compromised I will report this information to Entity's Privacy Officer and I will also immediately change my password. I understand that User IDs cannot be shared. Inappropriate use of my ID (**whether by me or anyone else**) is **my** responsibility and exposes me to severe consequences.

4. I understand that confidential health information includes but is not limited to:

Any individually identifiable information in possession or derived from a provider of health care regarding a patient's medical history, mental, or physical condition or treatment, as well as the patients and/or their family members records, test results, conversations, research records and financial information. (Note: this information is defined in the Privacy Rule as "protected health information.") Examples include, but are not limited to:

- Physical medical and psychiatric records including paper, photo, video, diagnostic and therapeutic reports, laboratory and pathology samples;
- Patient insurance and billing records including demographic information about the patient or any family member or guarantor;
- Centralized and/or department based computerized patient data and alphanumeric radio pager messages;

5. I agree to log off the application when I leave my workstation unattended to prevent unauthorized access to patient information contained in Link2CHOP.