

**ACCESS TO ELECTRONIC HEALTH RECORD SYSTEM AT
HACKENSACK MERIDIAN HEALTH**

THIS AGREEMENT is made by and between:

HACKENSACK MERIDIAN HEALTH, INC.
located at **343 Thornall Street, Edison, NJ 08837**

(hereinafter referred to as "HMH")

AND

_____,
Practice Name

located at _____
Street Address

City, State and Zip Code

Primary Practice Phone Number

(hereinafter referred to as "Outside Practice")

WITNESSETH:

WHEREAS, HMH utilizes certain systems which allow users to remotely access patient electronic health records (the "HMH EHR") among the HMH hospitals, other health care providers affiliated with HMH, and physicians and physician practices with medical staff privileges at the HMH hospitals or another health care provider affiliated with HMH and other providers of health care items and services in and around New Jersey;

WHEREAS, the HMH EHR will allow these parties to view and retrieve the electronic health records ("EHR") of their patients for the purpose of treatment, payment, 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, HMH believes that the use of HMH EHR technology by Outside Practice would substantially improve the quality of health care provided in and around New Jersey and would therefore like to allow access to the HMH EHR by Outside Practice, inclusive of all Outside Practice locations listed on **Exhibit C** subject to the restrictions and other requirements set forth in this Agreement;

WHEREAS, Outside Practice provides professional or other medical services to HMH patients, but does not have a contract with HMH for access to HMH EHR;

WHEREAS, Outside Practice has agreed to use the HMH EHR to improve the quality and efficiency of the medical services Outside Practice provides to HMH patients; and

NOW, THEREFORE, in consideration of the premises, 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 do hereby agree as follows:

1. HMH EHR Access.

A. Subject to the terms and conditions of this Agreement, HMH hereby grants Outside Practice non-transferable and non-exclusive access to the HMH EHR to permit the medical providers (each a “Medical Provider”), as defined and set forth in **Exhibit A** attached hereto, and their directors, officers, employees, contractors, and agents (collectively “Authorized Users”), to electronically access and use the HMH EHR solely for documentation, storing, processing and displaying medical records and other information, images and content related to the provision of healthcare to patients of such Medical Providers (the “HMH EHR License”). Outside Practice 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 HMH, and that each authorized user shall be prohibited from using another authorized user’s access code to access and/or use the HMH EHR. Outside Practice further acknowledges and understands and acknowledges that HMH may terminate individual Authorized Users’ access and/or the entire HMH EHR License at any time for any reason without penalty, regardless of any effect such termination may have on Outside Practice’s operations.

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

2. Use or Disclosure of PHI.

A. Outside Practice shall not use or disclose PHI received from HMH in any manner that would constitute a violation of federal or state law, including, but not limited to, HIPAA. Outside Practice shall ensure that its directors, officers, employees, contractors, and agents use or disclose PHI received from, or created or received on behalf of HMH only in accordance with the provisions of this Agreement and federal and state law. Outside Practice shall not disclose PHI in any manner other than as permitted by this Agreement. Outside Practice further agrees that all information accessed through the HMH EHR will be maintained in the strictest confidentiality and in the same manner as Outside Practice safeguards the confidentiality of other patient care records, or as required by state and federal law.

B. Outside Practice agrees to implement and utilize the HMH EHR and shall provide HMH with access to patients’ EHR that are created, maintained, transmitted, or received using the HMH EHR when such patients are also patients of HMH solely for the purposes of treatment, payment, or health care operations to the extent permitted without patient authorization by HIPAA. Outside Practice shall use the HMH EHR in accordance with any network security policies issued by HMH from time to time.

C. HMH and Outside Practice shall comply in all material respects with the standards for privacy of individually identifiable health information of the Administrative Simplification subtitle of HIPAA. HMH and Outside Practice recognize their status as “covered entities” under HIPAA and agree to carry out their

responsibilities under this Agreement in accordance with such status.

3. Process for Requesting HMH EHR Access.

A. Outside Practice shall provide HMH with the name and direct contact information for its Privacy Officer, and shall notify HMH of any change in such contact. Outside Practice shall also designate a liaison to coordinate user access (which person can also be the Privacy Officer). Outside Practice is responsible for notifying HMH of any addition, deletion or other change in the status of the Privacy Officer and liaison.

B. The liaison is responsible for managing the modification and termination for accounts that the Outside Practice is provided. The liaison shall also notify HMH of any additions or deletions of an Authorized User as well as notify HMH of any change in access rights by an Authorized User within one (1) business day of any change being made. Before access to the HMH EHR, each Authorized User shall select "I ACCEPT" to the terms and conditions of use (the "Confidentiality Statement") in the form provided herein as **Exhibit B**, attached hereto and incorporated herein by reference, as that form may be amended from time to time. Outside Practice 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 HMH, training regarding the requirements of HIPAA as they pertain to HMH EHR access.

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

D. Outside Practice is solely responsible for maintaining security of the HMH EHR username and passwords. Sharing of username and passwords that have been issued to Authorized Users is strictly prohibited.

E. Outside Practice is solely responsible for ensuring accuracy and completeness of information submitted by its Privacy Officer, liaison and/or Authorized Users of the HMH EHR.

4. Safeguards Against Unauthorized Use or Disclosure of Information.

Outside Practice agrees that it will implement all appropriate administrative, physical, and technical safeguards to prevent unauthorized use or disclosure of PHI. Outside Practice shall promptly notify HMH of any event that may result in the unauthorized collection, access, use, or disclosure of PHI. Outside Practice 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.

5. Data Ownership.

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

6. Reporting of Unauthorized Use or Disclosure of PHI.

A. Outside Practice shall, within one (1) working day of becoming aware of an unauthorized use or disclosure of PHI by Outside Practice, its officers, directors, employees, contractors, agents or by a third party to which Outside Practice disclosed PHI, report any such disclosure to HMH. Such notice shall be made to the following:

To HMH: Hackensack Meridian Health
 343 Thornall Street
 Edison, NJ 08837
 Attention: Information Technology & Chief Information Officer

cc: Hackensack Meridian Health
343 Thornall Street
Edison, NJ 08837
Attention: General Counsel Legal Services

B. Potential Data Security Breach

If at any time Outside Practice 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 Practice will immediately give HMH notice and take all necessary actions to eliminate the cause of the breach. To the extent HMH deems warranted, in its sole discretion, HMH will provide notice or require Outside Practice to provide notice to individuals whose PHI may have been improperly accessed or disclosed.

C. HMH has the right, at Outside Practice'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, within the limits of Outside Practice's technical capabilities.

7. Third Party Access.

Outside Practice shall obtain the written approval of HMH prior to allowing any agent or subcontractor access to PHI that is created or received on behalf of HMH. In the event that HMH consents to such third party access on a case-by-case basis, Outside Practice shall ensure that the agent or subcontractor agrees to be bound by the same restrictions, terms and conditions that apply to Outside Practice through this Agreement.

Outside Practice shall require that any agent or subcontractor notify Outside Practice of any instances in which PHI is used or disclosed in an unauthorized manner. Outside Practice shall take steps to cure the breach of confidentiality and end the violation or shall terminate the agency agreement or subcontract.

8. Availability of Books and Records.

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

9. Investigations/Sanctions.

HMH reserves the right to monitor, review and investigate reported and identified failures to comply with this Agreement and impose nonmonetary appropriate sanctions. Sanctions may include, but are not limited to, the

immediate termination of this Agreement, immediate termination of Outside Practice's access, or immediate termination of individual Authorized User access. HMH reserves the right to report unprofessional conduct to appropriate licensing or other regulatory authorities. Outside Practice agrees to cooperate with HMH in order to adequately investigate complaints received involving the Outside Practice's employees or agents. Outside Practice agrees to have a sanctions policy, produce it upon request, and discipline their employees or agents for all breaches involving HMH PHI in accordance with the HIPAA Privacy Rule. Outside Practice understands that lack of adherence to this section allows HMH to immediately void this Agreement and all associated access privileges.

Outside Practice further agrees to cooperate and promptly notify HMH of any discovery requests and furnish HMH with a copy of any subpoena so that prior to any disclosures made, HMH may, at its option, object to or dispute the disclosure.

10. Immediate Termination.

HMH may terminate its participation in this Agreement immediately without liability for such termination, in the event HMH determines that Outside Practice, or Outside Practice's directors, officers, employees, contractors or agents have violated a material provision of this Agreement.

11. Indemnification.

Outside Practice agrees to indemnify and hold harmless HMH, its governing board, officers, employees 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 Outside Practice's performance under this Agreement or negligent acts or omissions of its subcontractors, agents, or employees, including, but not limited to, any penalties, 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 required notice to impacted individuals, including the costs to retain an outside consulting firm, vendor or outside attorneys to undertake the effort.

12. Assignment.

Outside Practice may not assign any rights or obligations under this Agreement without the written consent of the HMH and any attempt to do so shall be void, except that HMH may assign this Agreement without consent of Outside Practice, and may delegate to authorized subcontractors or service suppliers any work to be performed under this Agreement so long as HMH remains liable for the performance of its obligations under this Agreement. This Agreement shall inure to and be binding upon the parties and their representative successors, permitted assigns and legal representatives. HMH shall have no obligations under this Agreement to any assignee of Outside Practice that is not approved by HMH in advance.

13. Insurance

During the term of this Agreement, Outside Practice, at its sole cost and expense shall provide commercial general liability insurance on an occurrence basis in the minimum amount of \$1,000,000 and cyber or network liability insurance with limits of \$2,000,000 per occurrence and \$2,000,000 in the annual aggregate and such coverage shall include breach response and notification. Outside Practice shall provide HMH original executed certificates evidencing such insurance upon request. Upon the receipt of any notice of cancellation, termination, or material change of such policy, Outside Practice shall promptly notify HMH in writing of such cancellation, termination, or change.

14. Entire Agreement.

This Agreement constitutes the entire agreement between the parties regarding access to the HMH EHR, and HMH EHR Access Agreement (July 2018)

supersedes all prior oral or written agreements, commitments, or understandings concerning the matters provided for herein.

15. 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.

16. 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 State of New Jersey.

EACH OF THE PARTIES EXPRESSLY WAIVES ALL RIGHTS TO A JURY TRIAL IN CONNECTION WITH ANY DISPUTES UNDER THIS AGREEMENT.

17. 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.

18. Term.

This Agreement is effective beginning as of the date this Agreement is executed by HMM and Outside Practice and will continue thereafter from year to year unless terminated by either party upon thirty (30) days written notice.

19. Representation & Warranties.

Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each party represents and warrants to the other that the execution and delivery of the Agreement and the performance of such party's obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on such party and enforceable in accordance with its terms.

20. Counterparts.

This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. Delivery of an executed counterpart of the signature page to this Agreement by facsimile or email with scan attachment shall be as effective as delivery of a manually executed counterpart of this Agreement. Copies of original signatures sent via e-mail or facsimile are deemed to be original signatures for purposes of execution of this Agreement.

**[THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK.
SIGNATURES APPEAR ON THE NEXT PAGE.]**

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

HACKENSACK MERIDIAN HEALTH, INC.

By:

Print Name: _____

Title: _____

Date: _____

OUTSIDE PRACTICE:

By:

(signature of officer, partner or individual duly authorized to sign)

Print Name: _____

Title: _____

Date: _____