

## EPICCARE LINK ACCESS AGREEMENT

This EpicCare Link Access Agreement (this “Agreement”), effective as of (the “Effective Date”), is entered into between Yale-New Haven Health Services Corporation, a tax-exempt Connecticut nonstock corporation on behalf of itself and all of its affiliates (“YNHHS”) and

(“Outside Entity”), a licensed health care provider and/or a Business Associate (as that term is defined by HIPAA) of YNHHS or Yale University bound by the terms of a separate Business Associate Agreement. YNHHS and Outside Entity are sometimes referred to in this Agreement individually as a “Party” and, collectively, as the “Parties”.

### RECITALS

- A. YNHHS utilizes certain systems, known collectively as EpicCare Link (“EpicCare”), which allow users to remotely access patient electronic health records among YNHHS hospitals, other health care providers affiliated with YNHHS, physicians and physician practices with medical staff privileges at, or otherwise affiliated with, YNHHS hospitals, and other providers of health care items and services within and around the YNHHS service areas (collectively, the “Providers”);
- B. YNHHS 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 YNHHS patients; or (ii) is a Business Associate of YNHHS or Yale University, but does not have a contract with YNHHS 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 YNHHS, Yale University, and their respective patients;

NOW, THEREFORE, the Parties agree as follows:

#### 1. **EpicCare Link.**

1.1 Access to EpicCare. Subject to the terms and conditions of this Agreement, YNHHS 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 YNHHS, and that each Authorized User shall be prohibited from using another Authorized User's access code to access and/or use EpicCare. YNHHS 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 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"). As of the Effective Date, Outside Entity's Authorized Users are listed in Exhibit 1.2(a). Notwithstanding the foregoing, YNHHS shall have the right to reject an Authorized User or suspend or terminate an Authorized User's access to EpicCare for any reason, or no reason whatsoever.

(b) Outside Entity shall ensure that each Authorized User signs a request form attached to this Agreement as Exhibit 1.2(b) 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) does not share or otherwise disclose his or her login information or access to EpicCare with any other individual or entity; (ii) 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 (iii) has never been convicted of or plead guilty or no contest to: (i) a felony; or (ii) a misdemeanor involving forgery, credit card fraud, bank fraud, or identity theft. In addition, Outside Entity shall ensure that any Authorized User that is a physician or allied health professional shall, in addition to the other requirements set forth in this Section 1.2, at all times during the term of this Agreement, have and maintain an unrestricted license and/or certification, as applicable, to practice medicine. Outside Entity shall notify YNHHS immediately in the event that any of the foregoing become untrue with respect to any Authorized User.

**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. YNHHS is not responsible for the procurement, installation or maintenance of any necessary components, and YNHHS 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 Outside Entity and paid directly to the suppliers of the components.

#### 1.4 Requesting System Access.

(a) Outside Entity shall provide YNHHS with the name and direct contact information for its Privacy Officer or similar official, and shall notify YNHHS 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, in a form and in a manner to be determined by YNHHS, training regarding EpicCare and the requirements of HIPAA as they pertain to EpicCare access.

(b) Access to EpicCare will be permitted only for such employees of Outside Entity who have a reasonable need to access PHI pertaining to YNHHS or Yale University patients for the purposes of providing treatment to such patients. Outside Entity shall notify YNHHS immediately when any Authorized User is separated from the employment of Outside Entity for any reason, and shall notify YNHHS 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 listed in Exhibit 1.2(a) 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 YNHHS 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 YNHHS 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, YNHHS 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 YNHHS.** Within twenty-four (24) hours of its 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 YNHHS. Such notice shall be made to:

Yale New Haven Health System  
Office of Privacy & Corporate Compliance  
789 Howard Avenue  
New Haven, CT 06519  
Attn: Privacy Officer  
Phone: 203-688-8416

**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 YNHHS and take actions to eliminate the cause of the breach. To the extent YNHHS deems warranted, in its sole discretion, YNHHS 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.** YNHHS 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 YNHHS, and shall cause Authorized Users to permit and cooperate with YNHHS, 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 YNHHS identifies failures to comply with this Agreement by Outside Entity or an Authorized User, YNHHS 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), or termination of an individual Authorized User's access to EpicCare, and termination of an Authorized User's YNHHS Medical Staff membership(s), as applicable. YNHHS reserves the right to report illegal, inappropriate, or unprofessional conduct to appropriate licensing or other regulatory authorities. Outside Entity shall cooperate with YNHHS in order to adequately investigate complaints received involving the Authorized Users or any other employees or agents of Outside Entity. Outside Entity shall implement and maintain sanctions policy, produce it upon request, and discipline its employees 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 YNHHS before allowing any agent or subcontractor of Outside Entity to access PHI that is created or received on behalf of YNHHS through EpicCare. In the event that YNHHS consents to such third party access on a case-by-case basis, Outside Entity shall ensure that the agent or subcontractor 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 agent or subcontractor 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 an agent or subcontractor of Outside Entity will be treated as if such use or disclosure were caused by Outside Entity itself.

#### **5. Responsibility for Medical Decisions.**

***This section applies only to the extent that Outside Entity is a provider of health care services.*** 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 notice of such termination at least fourteen (14) days prior to the effective date of termination.

6.2 Immediately upon Breach. YNHHS may terminate this Agreement immediately, without liability for such termination, in the event that YNHHS 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.**

YNHHS makes no warranties, either express or implied, as to EpicCare or any other items or services used in connection with EpicCare or this Agreement, and disclaims all express and implied warranties, including all express or implied warranties regarding the condition, merchantability, fitness for any particular purpose or non-infringement of EpicCare or any items or services used in connection with EpicCare or this Agreement. YNHHS does not warrant that any items or services provided pursuant to this Agreement will: (i) meet Outside Entity's business requirements or will operate in a particular computer environment, (ii) be accurate or error free, (iii) be uninterrupted or error free, or (iv) that any errors can be corrected.

## **8. Limitation on Liability.**

Neither YNHHS nor any of its affiliates shall have any liability for any damages whatsoever (including loss of profits or loss of goodwill) resulting from, arising out of or in connection with the use or inability to use or the performance or nonperformance of EpicCare 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, negligence, strict liability, products liability 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 YNHHS owns all rights, interests and title in and to its data and that such rights, interests and title shall remain vested in YNHHS 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 YNHHS without express written permission from YNHHS.

## **10. Indemnification.**

Outside Entity agrees to indemnify and hold harmless YNHHS and its affiliates, including, without limitation, their respective governing boards, officers, employees 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 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, 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 YNHHS hospital or affiliate.

**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.**

YNHHS 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 privacy and security laws and regulations applicable to YNHHS, 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 YNHHS 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.**

This Agreement shall be governed in all respects by the laws of the State of Connecticut, without regard to its conflict of laws principles that might make the law of some other jurisdiction applicable.

**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 YNHHS. 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 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. Counterparts.**

This Agreement may be 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.

**YALE-NEW HAVEN HEALTH SERVICES CORPORATION**

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

(Print name): \_\_\_\_\_

Title: \_\_\_\_\_

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

**OUTSIDE ENTITY**

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

(Print name): \_\_\_\_\_

Title: \_\_\_\_\_

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

**Exhibit 1.2(a)**

**Authorized Users**

[ENTER LIST OF AUTHORIZED USERS]

**Exhibit 1.2(b) Form of EpicCare Access Request Form**

See Attached.