

WakeHealthLink

AGREEMENT FOR ACCESS TO PROTECTED HEALTH INFORMATION
BETWEEN WAKE FOREST UNIVERSITY BAPTIST MEDICAL CENTER
AND _____

THIS AGREEMENT for Access to Protected Health Information (“PHI”) (“Agreement”) is entered into between Wake Forest University Baptist Medical Center (hereinafter “WFUBMC”) and _____ (hereinafter “Outside Entity”).

WHEREAS, WFUBMC utilizes certain systems which allow users to remotely access patient electronic health records (the “System”) among the WFUBMC facilities and other health care providers affiliated with WFUBMC;

WHEREAS, the System will allow certain authorized parties to view and retrieve the electronic health records (“EHR”) of their patients for the purpose of treatment, payment, or certain health care operations to the extent permitted without authorization by applicable state law, 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 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, WFUBMC believes that the proper use of the System by Outside Entity would substantially improve the quality of health care provided to patients and therefore desires to allow access to the System by Outside Entity, subject to the restrictions and other requirements set forth in this Agreement;

WHEREAS, Outside Entity provides professional or other medical services to WFUBMC patients, but does not otherwise have a contract with WFUBMC for access to the EHR;

WHEREAS, Outside Entity has agreed to use the System to improve the quality and efficiency of the medical services Outside Entity and WFUBMC provide to WFUBMC 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. System Access.

A. Subject to the terms and conditions of this Agreement, WFUBMC hereby grants Outside Entity non-transferable and non-exclusive access to the System 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 the System solely for 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 “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 individual Authorized User granted access by WFUBMC, and that each Authorized User shall be prohibited from using another Authorized User’s access code to access and/or use the System. Outside Entity further acknowledges and understands that WFUBMC may terminate Outside Entity’s and/or individual Authorized Users’ access and/or this Agreement at any time for any reason without penalty, regardless of any effect such termination may have on Outside Entity’s operations.

B. Outside Entity acknowledges and agrees that any hardware, software, network access or other items (collectively, the “Components”) necessary for Outside Entity to access and use the System must be obtained separately by Outside Entity. WFUBMC shall not be responsible for the procurement, installation or maintenance of any Components, and WFUBMC makes no representations or warranties regarding the Components whatsoever. Any fees associated with the Components shall be borne by Outside Entity and paid directly to the suppliers of the components.

C. Outside Entity acknowledges that WFUBMC does not guarantee constant or consistent availability of the System, and that the System may be periodically unavailable due to technical issues, security concerns, or hardware and software upgrades.

2. Use or Disclosure of PHI.

A. Outside Entity shall not use or disclose PHI received from WFUBMC in any manner that would constitute a violation of federal or state law, including, but not limited to, HIPAA. Outside Entity shall ensure that only its directors, officers, employees, contractors, and agents use or disclose PHI received from, or created or received on behalf of, WFUBMC only in accordance with the provisions of this Agreement and federal and state law. Outside Entity shall not disclose PHI in any manner other than as permitted by this Agreement. Outside Entity further agrees that all information accessed, viewed, or downloaded through the System will be maintained in the strictest confidentiality and, at a minimum, as required by state and federal law. In the event that the privacy and security standards employed by Outside Entity exceed state and federal requirements, Outside Entity shall protect such data in the same manner as Outside Entity safeguards the confidentiality of other patient care records. Outside Entity further agrees that it will implement all appropriate safeguards to prevent unauthorized use or disclosure of PHI.

B. Outside Entity agrees to implement and utilize the System and shall provide WFUBMC with access to a patient's EHR located on any system implemented or utilized by Outside Entity that are created, maintained, transmitted, or received using the System when such patient is also a patient of WFUBMC. WFUBMC agrees that such HER shall be used solely for the purposes of treatment, payment, or health care operations to the extent permitted without patient authorization by HIPAA. Outside Entity shall use the System in accordance with any policies issued by WFUBMC from time to time.

C. WFUBMC and Outside Entity shall comply in all material respects with the standards for privacy of individually identifiable health information of the Administrative Simplification subtitle of HIPAA. Outside Entity recognizes its status as a "covered entity" under HIPAA and agrees to carry out its responsibilities under this Agreement in accordance with such status.

3. Process for Requesting System Access.

A. Outside Entity shall provide WFUBMC with the name and direct contact information for its Privacy Officer, and shall properly notify WFUBMC prior to any change in such contact. Outside 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 of accounts that the Outside Entity is provided. Before accessing the System, each Authorized User shall agree to and sign the terms of a confidentiality statement (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 by WFUBMC. Outside 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 WFUBMC, training regarding the user requirements of the System.

B. For purposes of this Agreement, access to the System shall be permitted only for such employees of Outside Entity who have a reasonable need to access PHI of WFUBMC patients for purposes of carrying out their duties to such patients. The Authorized Users of Outside Entity who shall have access to the System are listed in Exhibit A of this Agreement, incorporated by reference herein. Outside Entity agrees to notify WFUBMC within 24 hours when any Authorized User is separated from employment of Outside Entity for any reason, including but not limited to retirement, termination or voluntary separation. Outside Entity further agrees that, on each anniversary date of this Agreement, or more frequently as requested by WFUBMC, it shall validate that each Authorized User listed in Exhibit A continues to have a reasonable need for access to the System and continues to be an employee or agent of Outside Entity.

4. Data Ownership.

Outside Entity acknowledges and agrees that WFUBMC owns all rights, interests and title in and to all data acquired, accessed, viewed, or downloaded through the System, and that such rights, interests and title shall remain vested in WFUBMC at all times. Outside Entity shall not compile and/or distribute such data or any analyses to third parties utilizing any data received from, or created or received on behalf of WFUBMC without express written permission from WFUBMC.

5. Reporting of Unauthorized Use or Disclosure of PHI.

A. Outside Entity shall, within twenty-four (24) hours of becoming aware of an unauthorized use or disclosure of PHI by any third party or by Outside Entity, its officers, directors, employees, contractors, agents or by a third party to which Outside Entity disclosed PHI, report any such disclosure to WFUBMC. Such notice shall be made by telephone call and by letter sent via a nationally recognized overnight carrier to the following:

Wake Forest University Baptist Medical Center
Medical Center Boulevard
Winston-Salem, NC 27157
ATTN: Privacy Office
(336) 716-4472

B. Potential Data Security Breach. If at any time Outside Entity 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 will immediately give WFUBMC notice and take actions to eliminate the cause of the breach. To the extent WFUBMC deems warranted, in its sole discretion, WFUBMC will provide notice or require Outside Entity to provide notice to individuals whose PHI may have been improperly accessed or disclosed.

C. WFUBMC has the right, at Outside 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, within the limits of Outside Entity's technical capabilities.

6. Availability of Books and Records.

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

7. Investigations/Sanctions.

WFUBMC 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 termination of this Agreement or termination of individual Authorized User access. WFUBMC reserves the right to report unprofessional conduct to appropriate licensing or other regulatory authorities. Outside Entity agrees to cooperate with WFUBMC in order to adequately investigate complaints received involving the Outside Entity's employees or agents. Outside Entity agrees to have a sanctions policy, produce it upon request, and discipline their employees or agents for all breaches involving PHI in accordance with the HIPAA Privacy Rule.

8. Immediate Termination.

Outside Entity understands, acknowledges and agrees that WFUBMC may terminate this Agreement immediately without liability at any time, and for any reason, within the sole discretion of WFUBMC.

9. Indemnification.

Outside Entity agrees to indemnify and hold harmless WFUBMC, its governing board, officers, employees and agents, from and against any and all claims, costs, losses, damages, penalties, liabilities, expenses, demands, and judgments, including litigation expenses and attorney's fees, which may arise from Outside Entity's breach and/or 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.

10. Insurance.

During the term of this Agreement, Outside Entity, at its sole cost and expense shall provide commercial general liability insurance on an occurrence basis in the minimum amount of \$1,000,000. Such liability insurance coverage shall include "cyber liability" insurance coverage.

11. Entire Agreement.

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

12. Amendment.

This Agreement may be modified only by a subsequent written Agreement executed by the parties.

13. 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 North Carolina.

14. 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.

15. Term.

The term of this Agreement shall be one year, beginning on, and will continue thereafter from year to year unless terminated by either party.

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

WFUBMC

Outside Entity

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Exhibit A

1. Medical/clinical personnel including, but not limited to MD, RN, LPN, NA, PA, CMA, NP, PA

2. Billing and coding related personnel including, but not limited to Coders, Medical Records Clerk, Billing Clerks

Acknowledged by:

Signature of individual authorized to sign for Outside Entity

Name: _____

Title: _____

Date: _____

Exhibit B

The protection of health and other confidential information is a right protected by law and enforced by fines, criminal penalties as well as employer policy.

Safeguarding confidential information is a fundamental obligation for all persons accessing confidential information.

Your clicking on “I AGREE” or signature at the end of this statement 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 privacy.

Read it carefully.

What you agree to in signing this statement:

1. I agree to protect the privacy and security of all information and data viewed, accessed, or downloaded using the System, including but not limited to Protected Health Information (PHI), as defined by HIPAA.
2. I agree to a) access PHI to the minimum extent necessary for my assigned duties and b) disclose such information only to persons authorized to receive it for treatment, payment or health care operations.
3. I agree not to access my own electronic PHI.
4. I agree that I understand the following:
 - a. WFUBMC tracks all user IDs used to access electronic records. Those IDs enable discovery of inappropriate access to PHI.
 - b. Inappropriate access, failure to secure, and/or unauthorized release of PHI by me may 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, failure to secure, and/or unauthorized release of PHI may result in temporary and/or permanent termination of my access to WFUBMC's electronic records.
 - c. That I will be assigned a unique User ID & a temporary password. 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 as necessary to comply with WFUBMC established policies 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 received, entered, viewed, printed or otherwise manipulated. If I have reason to believe that my User ID and password has been compromised I will immediately report this information to WFUBMC and I will also immediately change my password. I understand that User IDs may not be shared. Inappropriate use of my ID (whether by me or anyone else) is my responsibility and exposes me to severe consequences.

I further agree that I shall not leave a computer or device through which I am logged into the System unattended and that I shall not use any User ID and/or password storage program which would allow for automatic population of the User ID and/or password fields when logging to the System.

Signature: _____

Name: _____