

**ACCESS TO ELECTRONIC HEALTH RECORDS AGREEMENT
WITH
THE DOCTORS CLINIC, PART OF FRANCISCAN MEDICAL GROUP**

THIS AGREEMENT (“Agreement”) is made and entered into this _____ day of _____, 20___, by and between The Doctors Clinic, part of Franciscan Medical Group (“TDC”), and _____ (“Community Partner”).

RECITALS

A. Franciscan Medical Group provides health care to patients in Kitsap County, Washington through its TDC locations and utilizes information technology for maintenance of electronic health records for services rendered at those locations, specifically Greenway Intergy Electronic Health Record; and

B. Community Partner provides health care services to patients in Kitsap County who also receive services through Franciscan Medical Group’s TDC locations..

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

D. Community Partner and TDC intend to protect the privacy and provide for the security of protected health information pursuant to HIPAA, the Health Information Technology for Economic and Clinical Health Act (the “HITECH Act”), and the regulations promulgated there under, and as may be amended from time to time (collectively, the “Privacy and Security Regulations”).

E. Community Partner and TDC desire to provide access to and share electronic health records necessary and used solely to enhance the continuum of health care to mutual patients of TDC and Community Partner.

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 **Community Partner** means a physician, practitioner, health care provider, grouppractice, 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, therelease, transfer, provision of, access to, or divulging in any other manner of protected health information outside TDC internal operations.

1.4 **Electronic Health Record** (“EHR”) means the Greenway Intergy Electronic Health Record system that is a repository of consumer health status information in computer-processible form used for clinical diagnosis and treatment for a broad array of clinical 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 TDC’s 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 Community Partner 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 Community Partner from or on behalf of TDC or is created by Community Partner, or is made accessible to Community Partner by TDC. 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 or her designee.

1.9 **Use** or **Uses** means, with respect to PHI, the sharing, employment, application, utilization, examination or analysis of such PHI within Hospital’s internal operations.

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. TDC OBLIGATIONS

Access. TDC will provide Community Partner with access to TDC’s EHR subject to licensing agreement with IT vendors, and Community Partner’s compliance with this Agreement.

2.2 Electronic Communication. TDC will assist Community Partner with obtaining IT necessary and used solely to create, maintain, transmit, or receive EHR. Community Partner is responsible for its installation, operation, and ongoing maintenance of IT hardware associated with communications between Community Partner's IT system and TDC's IT system.

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

3. CLINIC OBLIGATION.

3.1 Permitted Use. Community Partner may access TDC's IT system to access EHR that is necessary and used solely for the ongoing treatment of Community Partner's patients. Community Partner shall not use TDC's IT system or EHR for any other purpose.

3.2 Application for Use.

3.2.1 Community Partner will complete the application to access EHR (*EXHIBIT A*) and provide a list of Community Partner's staff requesting access to TDC's EHR.

3.2.2 Community Partner will obtain a signed Access User and Confidentiality Agreement (*EXHIBIT B*) from each individual requesting access and provide the agreements to TDC.

3.3 Compliance. Community Partner is responsible for ensuring compliance with the terms and conditions of this Agreement. Community Partner acknowledges that its acts or omissions concerning EHR or use of TDC's 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. Community Partner will notify TDC's within three business days of the departure of Community Partner physicians, advanced practice clinicians and/or any other staff that has access to TDC's EHR, so that TDC may discontinue such access.

3.5 Audits. TDC may routinely conduct random and targeted audits of access to TDC's IT system and EHR. Community Partner agrees to cooperate with any audits and any resulting investigation that may involve Community Partner's access.

3.6 Maintenance of Information Technology. Community Partner 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. Community Partner warrants that it shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of

TDC's IT system, EHR, and PHI that it receives, maintains, or transmits from TDC as required by law. Community Partner shall protect TDC's IT system from viruses and similar program threats and manage logging and other data collection mechanisms.

3.7 Training. Community Partner is responsible for HIPAA training and education, including appropriate access to EHR and terms in the Access User Agreement.

3.8 Reporting Breaches. Community Partner shall report to TDC any Breach that is made by Community Partner that is not specifically permitted by this Agreement. Community Partner shall report to TDC 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 TDC's IT system.

Community Partner shall notify TDC's Privacy Official by telephone call immediately following the first day on which Community Partner knows of such Breach.

Community Partner shall provide a full written report to TDC's Privacy Official within five (5) days of verbal notice. Community Partner 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, TDC's Privacy Officer is Jay Burghart, Executive Director, telephone number, 360-782-3600.

3.9 Confidentiality. Community Partner shall only access TDC's IT system and EHR as provided in this Agreement. Community Partner's use of and access to EHR is limited to Community Partner's treatment of mutual patients of TDC and Community Partner. Community Partner agrees that no other person or entity shall have access to, publish, or pass on Community Partner's password to access TDC's IT system and EHR, whether in electronic, print, or other form. Community Partner's unauthorized distribution of Community Partner's password, or information accessed from TDC's IT system shall result in immediate termination of this Agreement, and may subject Community Partner's employee, physician, or practitioner to actions and remedies available to TDC under law or equity.

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

3.11 **Indemnity.** Community Partner shall indemnify, defend and hold harmless, TDC 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 Community Partner.

4. MUTUAL OBLIGATIONS

4.1 **No Referral Obligation.** Nothing herein shall be construed to require Community Partner to refer patients to TDC or to require TDC to refer patients to Community Partner.

4.2 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 TDC may, in its sole discretion, immediately terminate this Agreement upon Community Partner's Breach or imminent Breach.

4.3 **Assignability.** Except as otherwise expressly provided in this Agreement, Community Partner 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 Washington 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 Clinic

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.

TDC:

COMMUNITY PARTNER:

The Doctors Clinic,
now part of Franciscan Medical Group

By: _____

By: _____

Executive Director and Privacy Officer

Title: _____

Date: _____

Date: _____

EXHIBIT A

**APPLICATION TO ACCESS ELECTRONIC HEALTH RECORDS
FROM
THE DOCTORS CLINIC, PART OF FRANCISCAN MEDICAL GROUP**

Date: _____

Community Partner Information

Company/Facility Name: _____

Address: _____

City: _____

State: _____

Zip Code: _____

Manager Name: _____

Email _____

Phone: _____

Facsimile: _____

EXHIBIT B
ELECTRONIC HEALTH RECORD
ACCESS USER AND CONFIDENTIALITY AGREEMENT
WITH THE DOCTORS CLINIC, PART OF FRANCISCAN MEDICAL GROUP

This Agreement must be completed and signed by each individual requesting access to The Doctors Clinic part of Franciscan Medical Group's Greenway Intergy Electronic Health Records. The Agreement must be completed and returned to representatives of The Doctors Clinic's Information Technology Department before access will be granted.

Name of Individual Requesting Access (please print): _____

Community Partner Name and Address: _____

I am requesting access to the Greenway Intergy electronic health record system that is used by providers at Franciscan Medical Group's The Doctors Clinic locations (TDC), part of Franciscan Health System in Tacoma, Washington to obtain Electronic Health Records, and I agree to the following terms and conditions:

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.

Community Partner provides health care services to patients in the community of TDC. Community partners may consist of a physician, practitioner, health care provider, group practice, partnership, or corporation of physicians and/or practitioners, health care providers, and its employees.

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 TDC internal operations.

Electronic Health Record (“EHR”) means a repository of consumer health status information in computer-processable form used for clinical diagnosis and treatment for a broad array of clinical conditions. EHR's contain protected health information.

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.

Information Technology (“IT”) for purposes of obtaining access to TDC’s 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 Community Partner practice.

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 healthcare to an individual, or the past, present, or future payment for the provision of healthcare to an individual; (ii) identifies the individual (or for which a reasonable basis for believing that the information can be used to identify the individual exists); and (iii) is received by TDC from or on behalf of Community Partner, or is created by TDC, or is made accessible to TDC by Community Partner. PHI may be contained in other mediums including without limitation, electronic PHI, EHR, paper records, audio, and video recording.

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.

Use or **Uses** means, with respect to PHI, the sharing, employment, application, utilization, examination or analysis of such PHI within TDC’s internal operations.

Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the Privacy and Security Regulations.

I acknowledge that TDC’s IT system is the property of Franciscan Health System. I agree to use TDC’s IT system solely for job-related purposes.

I understand that all EHR available through TDC's IT system is confidential and is to be treated as such.

I promise to access TDC's IT system only in the minimal amount necessary to obtain EHR for the provision of health care services to the Community Partner patient(s).

I understand that passwords and user identification ("ID") are utilized to access TDC's IT system. I acknowledge that I may not divulge my password or ID to any other individual or entity. I understand that I am responsible for any damages, including monetary damages, for the inappropriate use and/or disclosure of EHR, even if such inappropriate use and/or disclosure was made by another individual using my password or ID. I agree that if I suspect that my password or ID has been obtained by another individual, I will immediately inform the Information Technology Department on staff at The Doctors Clinic's Corporate Office location in Silverdale, WA or its Executive Director so that appropriate action may be taken.

I understand that I am not permitted to access TDC's IT systems for anything other than my intended job-related purpose. Accordingly, I understand that I am not permitted access to my health information, my family, or relative's health information, or another person's health information because of personal curiosity or personal reasons. I acknowledge that unauthorized access of EHR, confidential files, or TDC's IT system without the proper security clearance and/or access authorization, is, for whatever reason, considered a violation of Community Partner Agreement. I understand that TDC's IT systems are monitored by The Doctors Clinic's Information Technology Department. I understand that IT security features, such as passwords and message deletion functions, do not remove the ability to archive messages, at any time, for future auditing. I understand that the TDC IT system is subject to search, and that Franciscan Health System is able to track and monitor my access into TDC's IT system. I understand that I do not have any personal privacy rights by utilizing TDC's IT system. I agree that I will use TDC's IT system only to access EHR for patient care purposes. I promise that I will not use TDC's IT system for any other purpose including personal use, solicitation for outside business ventures, campaigns, and political or religious causes. I understand that I am prohibited from storing, displaying, or disseminating obscene, offensive, harassing, or discriminatory textual or graphical materials on TDC's IT systems.

I understand that should I violate any provision of this Access User and Confidentiality Agreement, my access to TDC's IT system will be discontinued. Additionally, Franciscan Health System may take legal action against me, including seeking monetary damages for inappropriate use and/or disclosure of PHI. I understand that Franciscan Health System may be obligated to report my unauthorized access and use of PHI to federal authorities, including the federal Office for Civil Rights, and local and federal law enforcement officials.

I agree to 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 unauthorized or prohibited Use or Disclosure of Hospital IT system, PHI, or any other breach of this Agreement.



I acknowledge that I have read, understand, and agree with the conditions above. Further, I agree to immediately notify Franciscan Health System of any conflict with or violation of the above conditions.

User Signature

Date