

## **BSMH SYSTEM ACCESS AGREEMENT**

Bon Secours Mercy Health, Inc. ("BSMH") may provide your practice and staff (the "Practice") with access to certain information systems and databases (collectively, the "Software"). Such Software may include, but is not limited to, read-only and/or orders entry and documentation rights and access to BSMH' inpatient and outpatient medical record system. BSMH may add, delete, upgrade or otherwise modify the types and mix of Software accessible hereunder from time-to-time. The Practice's access and use of the Software is subject to the terms and conditions of this Agreement and all attachments hereto.

1. Scope of Use: The Practice will access the Software and use the data only as permitted herein and shall further access the Software and use the data as permitted or required by the Privacy Rule and Security Rule of the Health Insurance Portability and Accountability Act (collectively, "HIPAA") or more stringent state law. Notwithstanding anything herein to the contrary, the Practice acknowledges and agrees, and shall cause all of its personnel that will have access to Software to acknowledge and agree, that it and they will: (a) access the Software and use the data only with respect to patients of the Practice; and (b) use and disclose only Minimum Necessary (as defined by HIPAA) data to accomplish the legitimate business needs of the Practice. The Practice shall not, and shall cause all of its personnel that will have access to the Software not to: (x) mine or otherwise aggregate any data within the Software for research or other purposes, or (y) de-identify (as defined by HIPAA) the data for any purpose.

2. User-IDs, Confidentiality and Security: The Practice acknowledges the importance of safeguarding the privacy of all data contained in the Software, including, without limitation, individually-identifiable health information (also known as "Protected Health Information" or "PHI" under HIPAA). Accordingly, the Practice's use of the Software shall be subject to the terms of the Confidentiality and Security Agreement distributed with this Agreement. The Practice shall require all of its personnel that will have access to the Software to execute the

Confidentiality and Security Agreement prior to accessing the Software. The Practice shall be solely responsible for its users' utilization of the Software and for providing its users with reasonable confidentiality, security and HIPAA training. Upon BSMH request, the Practice shall deliver a copy of the individually executed agreements to BSMH. The Practice shall promptly notify BSMH when any authorized users cease to be employed by the Practice. In the event the Practice learns of any user activity that is contrary to the terms of this Agreement, the Practice shall promptly notify the BSMH IT Security Office.

3. Restrictions on Use: The Practice acknowledges and agrees that the Software consists of software, templates, algorithms, processes, databases and other materials created by BSMH or licensed by BSMH from third party vendors and service providers (collectively, the "Vendors"). BSMH and its Vendors own the Software and all components thereof. Except for the limited access rights granted herein, the Practice shall have no right or license in the Software and all rights are expressly reserved by BSMH and its Vendors. The Practice shall not, and shall not permit any third party to, modify, adapt, create derivative works of, reverse engineer, decompile, disassemble or otherwise attempt to discover the source code of the Software. The Practice shall not alter or remove any copyright statements, disclaimers, warnings or other notices included within the Software or materials related thereto. The Practice shall treat the Software and all related materials as confidential and trade secret information, and shall not disclose any portion thereof to any third party. The Practice shall limit access to those of its personnel that need to have access to support the Practice's use of the Software hereunder, and shall not use the confidential information for any other purpose. Under no circumstances may the Practice or any of its users: (i) utilize the Software or any portion thereof to create a competitive product or service, or (ii) provide access to the Software or any portion thereof to any third party that makes products or services which are competitive with the Software.

4. Additional BSMH Policies: All access to the Software is also subject to BSMH's then current written policies applicable to the Software and all data and records stored therein, which policies may include additional requirements from the third party Vendors. If BSMH makes any material changes to these policies, BSMH will provide you with written or electronic notice that changes have been made. If you do not agree to accept the changes to the policies, you must terminate your access to the Software hereunder.

5. Termination or Suspension of Access: The Practice may terminate access to the Software by ceasing use of the Software and so notifying BSMH in writing. BSMH may terminate the Practice's access to the Software or portions thereof at any time upon reasonable prior notice or immediately if the Practice ceases to be affiliated or otherwise associated with BSMH. BSMH may suspend all or part of the Practice's access immediately without prior notice if BSMH has reason to believe: (a) the Practice or any of its personnel is in breach of these terms, or (b) the Practice's continued access may adversely impact the integrity of the Software or use thereof by BSMH or its other users. Upon a determination of breach of this Agreement by BSMH in its sole discretion, BSMH may, in addition to other rights available to it in law or in equity, terminate access to the Software and terminate this Agreement.

6. Independent Medical Judgment: The Practice acknowledges and agrees that while the Software is intended to be a tool for use by healthcare practitioners, the Software and all content and functionality therein is not a substitute for the professional judgment of healthcare practitioners in diagnosing and treating patients. Neither BSMH, in its role providing access to the Software hereunder, nor the Vendors are giving medical advice or providing medical or diagnosis services through the Software. The Practice and its users are solely responsible for making all medical, diagnostic or prescription decisions – and for verifying the availability or accuracy of any data to the extent it would verify paper records – regardless of whether the Software is available and/or providing related clinical alerts, workflows or other content. The Practice accepts sole

responsibility for the accuracy, completeness, and integrity of all data, including but not limited to PHI, it inputs into the Software (collectively, the "Practice Data"), and for all medical judgments and advice made and provided by the Practice and its users using the Practice Data maintained within the Software. The absence of a warning for a given drug or drug combination should not be construed to indicate that the drug or drug combination is safe, appropriate or effective in any given patient.

7. Disclaimers: The Software, all data and access thereto is provided by BSMH on an "AS IS" and "AS AVAILABLE BASIS." Neither BSMH nor its Vendors warrant that operation of the Software or the Practice's access thereto will be continuous, error-free or uninterrupted. BSMH and its Vendors EXPRESSLY DISCLAIM ALL EXPRESS AND IMPLIED WARRANTIES WITH RESPECT TO THE SOFTWARE, DATA OR ACCESS, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. The Practice's sole remedy for any Software error or failure is to cease use of the Software. The Practice acknowledges that BSMH and its Vendors are not responsible for: (i) the accuracy of codes or other data in the Software, (ii) any data submitted by any user of the Software, (iii) the performance of the Practice's equipment used to access the Software, or (iv) any acts or omissions of the Practice, its users, representatives or service providers. BSMH is not responsible for providing any support or maintenance to the Practice's network or equipment utilized to access the Software.

8. Limitation of Liability: IN NO EVENT SHALL BSMH OR ITS VENDORS BE LIABLE TO THE PRACTICE, ITS USERS OR ANY THIRD PARTY FOR ANY DIRECT, INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL OR EXEMPLARY DAMAGES (INCLUDING, BUT NOT LIMITED TO LOSS OF PROFITS OR REVENUES), UNDER ANY THEORY OF LIABILITY, EVEN IF SUCH PARTY HAS BEEN APPRISED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES OCCURRING. The Practice shall defend, indemnify and hold harmless BSMH, its affiliates and Vendors from and against any and all costs, liabilities, expenses or fees related to third party

claims arising from: (1) the Practice's use of the Software except to the extent caused by the gross negligence or willful misconduct of BSMH; (2) the Practice's use of the Practice Data, including but not limited to any errors or omissions in the Practice Data; and (3) BSMH reliance on the accuracy of the Practice Data except to the extent caused by the gross negligence or willful misconduct by BSMH. The Practice acknowledges and agrees that BSMH would not have provided access to the Software under these terms absent the allocation of risks specified in this limitation of liability and the disclaimers of warranties.

9. Indemnification: The Practice shall defend, indemnify and hold BSMH, its affiliates and licensors, and any third parties involved in the administration, management, oversight or operation of the Software, harmless from any and all losses, claims (including claims arising from the negligence of such parties), damages, liabilities, costs and expenses, including reasonable attorneys' fees, arising out of: (a) any claim by a third party arising from compliance with Practice instructions or the Agreement, (b) claims by the Practice, its end users, its patients, or persons with a financial or familial relationship with such patients, related to BSMH' or third parties' administration, management, oversight or operation of the Software; (c) claims by patients or persons with a financial or familial relationship with such patients related to the Practice's use of the Software, or (d) any claim by a third party arising from the Practice's and/or its users' failure to comply with the requirements of this Agreement.

10. Miscellaneous: This Agreement and the BSMH policies described in Section 4 constitute the entire understanding and agreement of the parties with respect to its subject matter, and supersedes all prior and contemporaneous understandings and agreements, whether written or oral, with respect to such subject matter. The Practice may not assign its rights granted under this Agreement, by operation of law, change of control or otherwise, without BSMH' prior written consent. No delay or failure by either party to exercise or enforce at any time any right or provision of this Agreement will be considered a waiver thereof, and no single waiver will constitute a continuing or subsequent waiver. If any provision of this Agreement, or the application thereof, shall for any reason and to any extent be determined by any tribunal of competent jurisdiction to be invalid or unenforceable, the remaining provisions of this Agreement shall survive and be interpreted so as best to reasonably effect the intent of the parties. The parties further agree that any such invalid or unenforceable provisions shall be deemed replaced with valid and enforceable provisions that achieve, to the extent possible, the business purposes and intent of such invalid and unenforceable provisions. The provisions contained in Sections 3 and 6-9 shall survive expiration or termination of this Agreement. This Agreement shall be governed, interpreted and construed under the laws of the State of Maryland without regard to its conflict of law principles.

Upon BSMH' receipt of an appropriately executed copy of this Agreement and acceptance of your access request, this Agreement will be a binding agreement between the Practice and BSMH with respect to access to the Software.

\_\_\_\_\_  
Practice Name

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Date

Address: \_\_\_\_\_ Print Name: \_\_\_\_\_