

## Authorized User Agreement

ACCESS TO THE EPIC CARE EHR (AS DEFINED BELOW) IS SUBJECT TO THE TERMS AND CONDITIONS SET FORTH IN THIS AUTHORIZED USER AGREEMENT (“AGREEMENT”). This Agreement constitutes a binding legal agreement between Your Practice (“Client”) and You (“User”), effective as today’s date. By continuing your log-in to this system, you hereby acknowledge and accept the following terms

### 1. SYSTEM ACCESS

1. The Scripps Accountable Care Organization (“Scripps ACO”) and Scripps Health (“Scripps Health”) believe it is important to encourage the adoption of interoperable electronic health record (“EHR”) technology. Accordingly, pursuant to that certain Software Access Agreement between and among Client, Scripps ACO and Scripps Health (the “Software Access Agreement” or “SAA”), Scripps ACO and Scripps Health are offering programs that makes integrated EHR technology available to eligible physicians and mid-level practitioners as described in the Software Access Agreement (referred to collectively as the “EHR Programs”). Scripps ACO and Scripps Health are referred to collectively as “Scripps.”
2. For the EHR Programs, Scripps delivers software that is licensed from Epic System Corporation (“Epic”) as well as other software and content that is licensed from other vendors and related services so that independent physicians and healthcare organizations such as Client will have remote access to the EpicCare EHR hosted by Scripps Health (referred to collectively as the “EpicCare EHR”).
3. Scripps has developed certain policies, procedures, standards, rules, regulations, guidelines and recommendations regarding the pre-implementation, implementation, training, use and support of the EpicCare EHR, and the privacy and security of patient information (the “Scripps EHR Practices and Procedures”), which shall be posted on Scripps EHR Portal and are incorporated herein by reference. The Scripps EHR Practices and Procedures may be amended, modified, or revised from time-to-time by Scripps. The most current Scripps EHR Practices and Procedures will be posted on Scripps EHR Portal. Client may send User written notice (a “Change Notice”) of any modifications of the Scripps EHR Practices and Procedures. Client will provide the Change Notice by email; and the change to the Scripps EHR Practices and Procedures shall be effective either when the Change Notice is sent by Client or as of the effective date specified in the Change Notice. The “Scripps EHR Portal” means the website at which Scripps’ important information regarding the EHR Program and the EpicCare EHR is posted (including the Scripps EHR Practices and Procedures, the Additional License Terms and contract-specific information). Client will provide the web address for the Scripps EHR Portal to User.
4. The “Additional License Terms” are the additional license terms that apply to one or more items of software or the services (i.e., in addition to the terms in the body of this Agreement). The Additional License Terms shall be posted on Scripps EHR Portal and are hereby incorporated into and made a part of this Agreement. The Additional License Terms are subject to revision, amendment and update during the Term; any revised, amended, or updated Additional License Terms shall also be considered incorporated into this Agreement. During the Term of this Agreement, there may also be Additional License Terms for new, replacement or additional software and services provided to Client, which shall be posted on Scripps EHR Portal. Throughout the term of this Agreement, Client and each User shall comply with the most current version of the Additional License Terms. Client will provide User a Change Notice by email regarding any change to the Additional License Terms or new Additional License Terms; and the change shall be effective either when the Change Notice is sent by Client or as of the effective date specified in the Change Notice.
5. Client makes accessible to authorized users its remote access to the EpicCare EHR, which contains electronically stored medical information, including protected health information (“PHI”) as defined under Health Insurance Portability and Accountability Act (“HIPAA”).

6. Scripps or its designee will provide User with a username and unique password, or ability to select a unique password, (“Log-on Credentials”) for access to the EpicCare EHR for the limited and sole purpose of providing healthcare and/or healthcare support services. User’s rights to access and use the EpicCare EHR are non-exclusive and non-transferable.
  7. User’s access to the EpicCare EHR will be recorded electronically, and User consents to having all or any portion of his/her access to and use of the EpicCare EHR recorded, audited and/or reviewed at any time by Client, Scripps or their respective designees.
  8. User agrees that Scripps has the right to provide Epic information and data regarding User’s access and use of the EpicCare EHR, including information Epic uses for performance benchmarking and information and data that Scripps is required to provide in order to be certified through Epic’s Connect Accreditation program (or any successor program adopted by Epic).
2. **TERMS AND CONDITIONS OF ACCESS AND USE**
1. In consideration for access to and use of the EpicCare EHR, throughout the term of this Agreement, User agrees to abide by all terms and conditions of this Agreement, the SAA and this Agreement including without limitation, (i) the most current Additional License Terms, and (ii) the most current Scripps Practices and Procedures. All documents referenced in and/or attached to this Agreement are made part of this Agreement, as though fully set forth herein. Client reserves the right, at its sole discretion, to amend this Agreement (including the exhibits and attachments) from time to time, without prior notice or the written approval of User.
  2. Information, including PHI, User accesses from or through the EpicCare EHR is intended solely for the use by User to provide legitimate healthcare or healthcare support services in accordance with Client’s internal business purposes, all as specified in the Software Access Agreement. Access to and/or use of the EpicCare EHR for any other purpose is expressly prohibited.
  3. User agrees to comply with all federal and state laws and regulations governing the privacy and security of personal information and PHI, including without limitation, HIPAA and related regulations (collectively, “Applicable Laws”). User shall not act or fail to act in any way that would cause Client, Scripps or any licensors under the Software Access Agreement Scripps (collectively, “Licensors”) to be noncompliant with any of the Applicable Laws.
  4. User agrees to take appropriate measures to safeguard his/her log-on credentials and will not allow any other individual to access the EpicCare EHR using its log-on credentials. User shall notify Client and Scripps immediately if User believes his/her log-on credentials have been compromised.
  5. User agrees to use appropriate safeguards and practices to prevent disclosure or use of PHI other than as expressly permitted by this Agreement.
  6. If User becomes aware of any disclosure or use of PHI, or other information, which would violate this Agreement (“Unauthorized Disclosure”), User agrees to:
    1. Mitigate, to the extent practicable, any harmful effect that is known to User related to an Unauthorized Disclosure;
    2. Immediately report the Unauthorized Disclosure to Client and Scripps; and
    3. Provide full cooperation and assistance to Client and Scripps or its designee in the investigation and mitigation of the Unauthorized Disclosure.
3. **SUSPENSION, TERMINATION AND DISCIPLINARY ACTION**
1. Client has the right to impose disciplinary actions against the User for any failure to comply with the terms and conditions of this Agreement, including without limitation, requiring User to repeat his/her HIPAA training, restricting or suspending User’s access to the EpicCare EHR, and/or termination.
  2. Scripps and Client have the right to immediately suspend User’s access to the EpicCare EHR at any time for any reason. Additionally, Client has the right to immediately terminate this Agreement and discontinue access to the EpicCare EHR at any time for any reason.
4. **DISCLAIMERS AND LIMITATION OF LIABILITY**
1. **Disclaimer. THE EPIC CARE EHR IS PROVIDED ON AN “AS IS” AND AN “AS AVAILABLE” BASIS. CLIENT, SCRIPPS AND THE LICENSORS DO NOT MAKE, AND**

HEREBY DISCLAIM, ANY REPRESENTATIONS OR WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, REGARDING THE EPICCARE EHR, OR ANY PORTION THEREOF, INCLUDING (WITHOUT LIMITATION) IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, AND ANY WARRANTIES ARISING BY COURSE OF DEALING OR CUSTOM OF TRADE. CLIENT, SCRIPPS AND LICENSORS MAKE NO REPRESENTATION, WARRANTY OR GUARANTEE THAT OPERATION OF THE EPICCARE EHR, OR USER'S ACCESS THERETO, WILL BE CONTINUOUS, ERROR-FREE OR UNINTERRUPTED, OR THAT THE EPICCARE EHR WILL BE COMPATIBLE WITH USER'S DEVICES OR OTHER SOFTWARE. USER ACKNOWLEDGES THAT THE EPICCARE EHR IS NOT INTENDED AS A SUBSTITUTE FOR PROFESSIONAL MEDICAL JUDGMENT, THAT USER SHALL HAVE FULL RESPONSIBILITY FOR THE CARE AND WELL BEING OF HIS/HER PATIENTS, AND THAT ANY RELIANCE BY USER UPON THE EPICCARE EHR SHALL NOT DIMINISH THAT RESPONSIBILITY. USER ACKNOWLEDGES AND AGREES THAT CLIENT, SCRIPPS AND THE LICENSORS ARE NOT RESPONSIBLE FOR: (A) THE ACCURACY OF CODES OR OTHER DATA THAT HAVE BEEN INCORPORATED INTO OR INCLUDED IN THE EPICCARE EHR; (B) ANY DATA SUBMITTED BY ANY USER OF THE EPICCARE EHR; (C) THE PERFORMANCE OF THE USER'S EQUIPMENT; (D) ANY DOWNTIME OR UNAVAILABILITY OF THE EPICCARE EHR; (E) LOSS OR CORRUPTION OF DATA OR INACCESSIBILITY OF DATA (THROUGH ENCRYPTION OR OTHERWISE) THAT OCCURS AS A RESULT OF A VIRUS, RANSOMWARE OR OTHER MALWARE; (E) USE OF DATA OR PHI BY ANY OTHER USER THAT HAS ACCESS TO THE EPICCARE EHR; OR (F) ANY DEFECTS, ERRORS OR LOSS OF DATA.

2. Independent Medical Judgment. Neither Client, Scripps nor the Licensors gives medical advice or provides medical or diagnosis services through the EpicCare EHR provided hereunder. Any content or data contained in or available via the EpicCare EHR is not a substitute for the professional judgment of healthcare providers in diagnosing and treating patients. Client, Scripps and the Licensors are not responsible for the accuracy, timeliness, completeness, appropriateness or helpfulness of any content, data, templates or decision support tools, and the User is solely responsible for confirming the accuracy or availability of all content and data and making all medical, diagnostic or prescription decisions (whether or not the EpicCare EHR is available). User is solely responsible for complying with all laws, regulations and licensing requirements applicable to his/her delivery of healthcare or healthcare services.
3. Limitation of Liability. TO THE MAXIMUM EXTENT PERMITTED BY LAW AND NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL CLIENT, SCRIPPS OR THE LICENSORS (INCLUDING, WITHOUT LIMITATION, THEIR RESPECTIVE AFFILIATES, DIRECTORS, COMMISSIONERS, OFFICERS, EMPLOYEES, AGENTS, CONTRACTORS, SUCCESSORS, OR ASSIGNEES) BE LIABLE TO USER FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES (INCLUDING LOSS OF USE, LOSS OF DATA, LOST PROFITS OR LOSS OF GOODWILL) ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, THE EPICCARE EHR OR OTHER MATERIALS PROVIDED IN CONNECTION WITH THE EPICCARE EHR, WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED UPON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE, AND WHETHER CLIENT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE.
4. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, CLIENT'S, SCRIPPS'S AND THE LICENSORS' (UNLESS A LESSER AMOUNT IS SET FORTH IN APPLICABLE LICENSES) CUMULATIVE LIABILITY TO THE USER UNDER THIS AGREEMENT, FROM ALL CAUSES OF ACTION AND ALL THEORIES OF LIABILITY, SHALL BE LIMITED TO THOSE ACTUAL AND DIRECT DAMAGES WHICH ARE REASONABLY INCURRED BY THE USER AND SHALL NOT EXCEED ONE HUNDRED DOLLARS (\$100). FOR THE ELIMINATION OF DOUBT, CLIENT'S, SCRIPPS AND THE

LICENSOR'S AGGREGATE LIABILITY FOR THE INITIAL AND ANY SUBSEQUENT CLAIM SHALL NOT EXCEED ONE HUNDRED DOLLARS (\$100).

5. INDEMNITY.

User understands and agrees that he/she is personally responsible for his/her actions in connection with access and use of the EpicCare EHR. User agrees to indemnify and hold harmless Client, Scripps their respective affiliates and subsidiaries, and the Licensors (each an "Indemnified Party") from and against any and all losses, claims (including claims arising from the negligence of such parties), damages, liabilities, costs and expenses, including reasonable attorneys' fees, to the extent associated with the acts or omissions of User, its agents or employees, and arising out of or related to: (a) an Indemnified Party's compliance with User's instructions or this Agreement; (b) any claim by the Client or its Users employees or contractors, providers, patients, or persons with a financial or familial relationship with such patients, or any other third party, arising from or related to (i) an Indemnified Party's administration, management or oversight of the EpicCare EHR or services described in the Software Access Agreement ("Services"), or (ii) the use, performance, or operation of the EpicCare EHR, or (iii) the provision of the Services; (c) claims by patients or persons with a financial or familial relationship with such patients, related to use of the EpicCare EHR or Services by User (including its employees or contractors); (d) failure to comply by User (including its officers, directors, members, providers, employees and contractors) with any term(s) of this Agreement; (e) any violation of any federal and state laws and regulations governing the privacy and security of personal information and PHI, including, without limitation, HIPAA (including the Privacy Rule, the Security Rule, and the Breach Notification Rule) or HITECH (all as defined in the Software Access Agreement), arising out of any act or omission of User; (f) any Unauthorized Disclosure; and/or (g) the cost of any mitigation services in connection with any Unauthorized Disclosure.

6. MISCELLANEOUS

1. **Governing Law.** This Agreement and the rights and duties of the parties hereunder shall be governed by and interpreted in accordance with the laws of the State of California. Any action, whether at law or in equity, shall be commenced and maintained and venue shall properly be in San Diego County, California.
2. **Entire Agreement.** This Agreement, including all exhibits, and any attachments or schedules to any of the foregoing, contains the entire understanding between the parties and supersedes all other agreements relating to the subject matter herein.
3. **Waiver.** The waiver of a breach hereunder may be affected only by a writing signed by the waiving party and shall not constitute a waiver of any other breach.
4. **Severability.** If for any reason a court of competent jurisdiction finds any provision of the Agreement invalid or unenforceable, that provision of the Agreement shall be enforced to the maximum extent permissible, and the other provisions of the Agreement shall remain in full force and effect; provided, however, that if, in such event, the purpose hereof is materially affected and the parties' intent is defeated, significantly compromised, or frustrated, then the parties shall modify this Agreement, as appropriate, to give effect to their intent.
5. **Assignment.** User may not assign, by operation of law or otherwise, any rights or delegate any duties under the Agreement to any third party without prior written consent by Client. Any purported assignment lacking such consent will be void at its inception.
6. **Third Party Beneficiaries.** Scripps ACO and Scripps Health are intended third party beneficiaries to this Agreement with the right to enforce provisions of this Agreement and to verify your compliance with the terms of this Agreement.