

OUTSIDE ENTITY MSK CARE LINK ACCESS AGREEMENT

THIS OUTSIDE ENTITY MSK CARE LINK ACCESS AGREEMENT (this “Agreement”) is made and entered into as of [DATE], (the “Effective Date”), by and between [OUTSIDE ENTITYNAME], a [STATE] [ENTITY TYPE], with a principal place of business located at [OUTSIDE ENTITYADDRESS] (“Outside Entity”), and Memorial Sloan Kettering Cancer Center, a New York not-for-profit corporation, and/or its affiliates and subsidiaries including Sloan-Kettering Institute for Cancer Research and/or Memorial Hospital for Cancer and Allied Diseases (collectively, “MSK”).

WHEREAS, MSK utilizes EpicCare Link, a system which allows certain users to remotely access MSK patient electronic health records, and is known and referred to herein as “MSK Care Link”;

WHEREAS, MSK Care Link has the capacity to allow Outside Entity to access electronic health records of MSK patients (“Patients”) for the purpose of treatment, payment, certain health care operations, Research, public health or health oversight activities, or other permitted purposes (collectively, “Permitted Purposes”), to the extent permitted under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and the regulations promulgated thereunder, as amended by the Health Information Technology for Economic and Clinical Health Act (HITECH), and the regulations promulgated thereunder (collectively, the “HIPAA Regulations”);

WHEREAS, Outside Entity represents that it is either (i) is a HIPAA Covered Entity that provides health care services to certain Patients, (ii) has been engaged by MSK or by a third party to monitor and/or audit certain activity in MSK Patient electronic health records in accordance with the HIPAA Regulations, or (iii) is authorized by law to perform certain public health or health oversight activities that require access to MSK Patient electronic health records as permitted by the HIPAA Regulations;

WHEREAS, MSK believes that the use of MSK Care Link by Outside Entity would either improve the quality of health care provided to Patients by MSK and/or Outside Entity, would improve the quality of MSK’s health care operations or research activities, would help to assess or improve the accuracy of MSK’s payment activities, or would assist in Outside Entity’s public health or health oversight activities, and therefore wishes to permit Outside Entity to access MSK Care Link subject to the terms of this Agreement; and

WHEREAS, Outside Entity wishes to use MSK Care Link to either improve the quality of the health care services it provides to Patients, improve the quality of MSK’s health care operations or research activities, help to assess or improve the accuracy of MSK’s payment activities, or perform Outside Entity’s public health or health oversight activities.

NOW, THEREFORE, in consideration for the above premises and the mutual promises contained herein, the receipt and sufficiency of which the parties hereby acknowledge, the parties hereby agree as follows:

1. MSK Care Link Access

a. System Access. Subject to the terms and conditions of this Agreement, MSK hereby grants Outside Entity a non-transferrable and non-exclusive right to access MSK Care Link to permit Authorized Users (defined below) to electronically access and use MSK Care Link solely for the purpose of viewing health records and other information, images, and content related to the provision of health care services to Patients whose information Outside Entity is permitted to access pursuant to HIPAA

Regulations, together with other limited access and use rights granted on a case-by-case basis (the “MSK Care Link License”). Outside Entity acknowledges and agrees that such access and use shall be achieved through unique access codes provided to each Authorized User by MSK, and that each Authorized User shall be prohibited from (i) using their unique access codes for matters other than Permitted Purposes; and/or (ii) using another Authorized User’s access code to access and/or use MSK Care Link. MSK may terminate individual Authorized User’s access rights and/or Outside Entity’s MSK Care Link License at any time and for any reason without penalty, regardless of any effect such termination may have on Outside Entity’s operations.

b. Authorized Users. Outside Entity shall ensure that only those clinical providers (“Providers”) and those nurses, medical assistants, and other administrative staff employed by or contracting with Outside Entity may access MSK Care Link (each, together with Providers, an “Authorized User”, and collectively, the “Authorized Users”). Outside Entity’s Authorized Users as of the Effective Date are listed in Exhibit A attached hereto. Following the Effective Date of this Agreement, Authorized Users may be added either (i) by amending Exhibit A or (ii) upon approval by MSK of a request submitted within the MSK Care Link application by Outside Entity’s Site Administrator (described in paragraph 2a below) to add a new Authorized User. Notwithstanding the foregoing, MSK shall have the right to reject any request to add new Authorized Users or suspend or terminate an Authorized User’s access to MSK Care Link at any time and for any reason, or no reason.

c. Conditions for Access. Outside Entity warrants and covenants (except as may be necessary for the duration of an emergency) that neither it nor its Authorized Users will request access to or access, any PHI of any individual unless Outside Entity has all necessary rights and permissions, consents and authorizations to access that PHI under applicable law. All such access of Authorized Users will be at the direction of Outside Entity and Outside Entity will assume full responsibility and liability for the acts or omissions of its Authorized Users.

d. Equipment. Outside Entity acknowledges and agrees that any hardware, software, network access or other components necessary for Outside Entity to access and use MSK Care Link must be obtained separately by Outside Entity. MSK is not responsible for the procurement, installation or maintenance of any necessary components, and MSK makes no representations or warranties regarding the components whatsoever, including, without limitation, the compatibility of the MSK Care Link with such components. Any fees for the components shall be borne by Outside Entity and paid directly to the suppliers of the components.

2. MSK Care Link Access Request Process.

a. Outside Entity shall provide MSK with the name and contact information for its Privacy Officer (or equivalent position) and shall notify MSK of any change thereof. Outside Entity shall also designate a liaison to coordinate Authorized User access (which person can also be the Privacy Officer), which liaison shall be referred to herein as the Site Administrator. The Site Administrator is responsible for requesting new Authorized User accounts and managing their modification and termination. Before using MSK Care Link, each Authorized User shall obtain a login ID from MSK and shall accept the MSK Care Link Terms and Conditions (the “Terms and Conditions”), which may be amended from time to time. Outside Entity represents and warrants that each Authorized User approved for access will adhere to the requirements of this Agreement and the Terms and Conditions. Outside Entity will require each Authorized User to complete HIPAA privacy and security training prior to using MSK Care Link, and periodically thereafter for the duration of the Agreement.

b. Outside Entity agrees to notify MSK promptly, and no more than 5 business days from the date, when any Authorized User is separated from employment of Outside Entity for any reason, including but not limited to termination or voluntary separation. Outside Entity further agrees,

every six (6) months from the date of this Agreement, to validate that the Authorized Users listed in Exhibit A or later approved continue to require access to MSK Care Link and continue to be employees or Agents of Outside Entity.

3. Use or Disclosure of Protected Health Information.

a. Outside Entity agrees that it will implement all appropriate safeguards to prevent unauthorized use or disclosure of PHI.

b. Outside Entity shall and shall ensure that its Authorized Users use or disclose PHI access through MSK Care Link in accordance with the terms of this Agreement and applicable laws. Outside Entity further agrees, on its own behalf and on behalf of its Authorized Users, that all information accessed through MSK Care Link will be maintained in the strictest confidence and in the same manner as Outside Entity safeguards the confidentiality of other patient care records.

c. Outside Entity and its Authorized Users shall comply in all material respects with the privacy and security standards for PHI under HIPAA Regulations. If Outside Entity is a Covered Entity, as that term is defined under HIPAA Regulations, Outside Entity agrees to carry out its responsibilities under this Agreement in accordance with the responsibilities and obligations for Covered Entities set forth under HIPAA Regulations.

4. Third Party Access.

a. Outside Entity shall obtain MSK's written approval prior to allowing any agent, contractor, or subcontractor (each, an "Agent", and collectively, "Agents") access to MSK Care Link or to any information made available by or received from MSK through MSK Care Link. In the event MSK consents to such third-party access, Outside Entity shall ensure that each Agent agrees to be bound by the same restrictions, terms, and conditions that apply to Outside Entity under this Agreement. Outside Entity shall require Agents to immediately notify Outside Entity of any instances in which PHI is accessed, used, transmitted, or disclosed in an unauthorized manner. Outside Entity shall take steps to mitigate any such breach to the greatest extent possible and shall thereafter prohibit the responsible Agent(s) from accessing MSK Care Link at the request of MSK.

b. Outside Entity agrees that, upon request of MSK, Outside Entity will obtain information from all Agents sufficient to demonstrate such Agents' compliance with this Agreement and applicable law.

5. Unauthorized Use or Disclosure of PHI.

a. Unauthorized Use or Disclosure. Outside Entity shall, immediately but in no event later than twenty-four (24) hours of becoming aware of any unauthorized use or disclosure of PHI by Outside Entity, its Authorized Users, officers, directors, employees, Agents, or any third party to which Outside Entity disclosed PHI, report any such use or disclosure to MSK. Any report to MSK pursuant to this provision shall be made to MSK's Privacy office at 646-227-2056 or privacy@mskcc.org, and in writing by certified mail with return receipt requested to the attention of the Privacy Officer, Memorial Sloan-Kettering Cancer Center, Compliance Office, 633 Third Avenue, New York, NY 10017, and shall include all information that MSK would be required to include in notification to an individual under 45 CFR §164.404(c), including but not limited to the identities of the individuals affected. Outside Entity shall also maintain a record of any such violations and shall provide such record to MSK upon MSK's request.

b. Security Breach. If Outside Entity at any time has reason to believe that PHI disclosed by MSK pursuant to this Agreement may have been accessed or disclosed without proper authorization or contrary to the terms of this Agreement, Outside Entity shall immediately notify MSK as provided in Section 5.a. and shall take actions to eliminate the cause and mitigate any harmful effect of such breach. To the extent MSK deems warranted, in its sole discretion, MSK will provide notice, or require Outside Entity to provide notice, to individuals whose PHI may have been improperly accessed or disclosed.

6. Assurances.

a. Access to Books and Records. Outside Entity agrees to make available to MSK, upon reasonable notice, its internal practices, books and records, including its policies and procedures, related to the use and disclosure of PHI accessed through MSK Care Link, or, upon request, to the Secretary of Health and Human Services or the Secretary's designated representative, for determination of MSK's and Outside Entity's compliance with applicable law.

b. Compliance Audits. MSK, on its own or through a third party, may from time to time audit Outside Entity's and its Authorized Users' and Agents' compliance with the terms of this Agreement and applicable law. Outside Entity shall, and shall cause its Authorized Users, to permit and cooperate with MSK in performing any such audit.

c. Disciplinary Action. In the event that MSK identifies a failure to comply with this Agreement by Outside Entity or an Authorized User, MSK may, without limitation, (i) terminate this Agreement; or (ii) terminate an Authorized User's access to MSK Care Link. MSK reserves the right to report illegal, inappropriate, or unprofessional conduct to appropriate credentialing, licensing or other regulatory authorities, including but not limited to the Secretary of Health and Human Services.

7. Data Rights. MSK shall own all right, title, and interest in and to the data made available through MSK Care Link. Outside Entity shall not compile and/or distribute analyses or other work product to third parties utilizing any data received from or created by or on behalf of MSK without the prior written consent of MSK.

8. Disclaimer of Warranties. MSK makes no warranties, express or implied, as to MSK Care Link or any other items or services used in connection with MSK Care Link 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 MSK Care Link or any items or services used in connection with MSK Care Link or this Agreement. MSK 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.

9. Indemnification. Outside Entity will indemnify, defend and hold harmless MSK and MSK's affiliates, directors, officers, employees and/or agents from and against any and all losses, liabilities and expenses (including, but not limited to, reasonable attorneys' fees) incurred in connection with any and all third-party claims and causes of action arising from or related to (i) any material breach by Outside Entity of this Agreement, (ii) any inappropriate use of MSK Care Link by Outside Entity, and/or (iii) any negligence or willful misconduct on the part of Outside Entity or Outside Entity's affiliates, directors, officers, employees and/or Agents in connection with this Agreement.

10. Limitation of Liability. TO THE FURTHEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW, IN NO EVENT SHALL MSK OR ITS AFFILIATES, DIRECTORS, OFFICERS, EMPLOYEES AND/OR AGENTS BE LIABLE TO OUTSIDE ENTITY AND/OR OUTSIDE ENTITY'S

AFFILIATES, DIRECTORS, OFFICERS, EMPLOYEES AND/OR AGENTS FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, RELIANCE OR PUNITIVE DAMAGES OR LOST PROFITS, WHETHER FORESEEABLE OR UNFORESEEABLE AND REGARDLESS OF PREVIOUS ADVISEMENT, UNDER ANY THEORY OF LIABILITY IN CONNECTION WITH THIS AGREEMENT.

11. Insurance. Outside Entity will, at Outside Entity's expense, maintain the following insurance policies in the following amounts during the term of this Agreement: (i) professional liability insurance with limits no less than \$1 million per occurrence and \$2 million in the aggregate, (ii) commercial general liability insurance with limits no less than \$1 million per occurrence and \$2 million in the aggregate, and (iii) cyber liability insurance with a limit no less than \$5 million per occurrence. Outside Entity will designate MSK as an "additional insured" on each such insurance policy. Upon MSK's reasonable request, Outside Entity will provide MSK with certificates of insurance evidencing such policies and designations. In the event Outside Entity becomes aware of any basis for a potential claim under such policies in connection with the activities contemplated by this Agreement, Outside Entity will promptly notify MSK of the facts underlying such potential claim.

12. Relationship of the Parties. Nothing in this Agreement will be construed as establishing or constituting a partnership, employment, joint venture, franchise or agency relationship between MSK and Outside Entity or any Authorized User, or to confer rights of any kind upon any third party. Neither party will have the right or authority to act for, represent or in any way bind the other party or to direct or control the day-to-day activities of the other party.

13. Termination.

a. Without Cause. Either party may terminate this Agreement by providing the other party with at least thirty (30) days' written notice.

b. For Breach. MSK may terminate this Agreement immediately without liability in the event that MSK determines that Outside Entity, or Outside Entity's Authorized Users, directors, officers, employees, or Agents have breached an obligation under this Agreement.

c. MSK Care Link License. MSK may terminate individual Authorized Users' access and/or Outside Entity's MSK Care Link License at any time for any reason, without liability, regardless of any effect such termination would have on Outside Entity's operations.

14. Miscellaneous. This Agreement may be signed in counterparts, each of which will be considered an original and all of which together will constitute one and the same instrument. Signatures on this Agreement sent by facsimile or PDF will be valid and binding and have the same force and effect as original signatures. Neither party may assign such party's rights or obligations under this Agreement without the prior written consent of the other party. This Agreement, together with the Schedules hereto, constitutes the entire agreement between the parties with respect to the subject matter of this Agreement and supersedes all prior understandings and agreements, written or verbal, between the parties with respect to the subject matter of this Agreement. This Agreement may be amended or modified only by a writing signed by both parties. This Agreement shall be governed by the laws of the State of New York, without regard to its conflicts-of-laws principles, and any dispute arising out of the subject matter of this Agreement shall be brought exclusively in a court of competent jurisdiction within New York County of the State of New York.

(signature page follows)

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the Effective Date.

OUTSIDE ENTITY:

By: _____

Name: _____

Title: _____

Date: _____

MSK:

**MEMORIAL SLOAN KETTERING CANCER
CENTER**

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT A

Authorized Users

[Please provide the full name and business email address of each Authorized User]