MEDISYSCARE LINK ACCESS AGREEMENT

THIS MEDISYSCARE LINK ACCESS AGREEMENT (this “Agreement”), dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2023, is entered into by and between MEDISYS HEALTH NETWORK, INC. with an address at 8900 Van Wyck Expressway, Jamaica, New York 11418 (“MediSys”) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ having an address at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Outside Entity”).

WHEREAS, MediSys has licensed from Epic Systems Corporation certain software which allows users to remotely access patient electronic health records (“MedisysCare ,Link”) created by affiliates of MediSys and certain community physicians participating in the Care Connect program (the “Data Providers”) and WHEREAS, MedisysCare Link has the capacity to allow Outside Entity to view electronic health records (“EHR”) of their patients for the sole purpose of treating the patient whose record is being accessed; and WHEREAS, MediSys believes that the use of MedisysCare Link by Outside Entity would substantially improve the quality of health care provided in MediSys’s service area, and therefore wishes to allow access to MedisysCare Link by Outside Entity, subject to the restrictions and other requirements set forth in this Agreement;

NOW, THEREFORE, in consideration of the promises, 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:

# MedisysCare Link Access.

1. Subject to the terms and conditions of this Agreement, MediSys hereby grants Outside Entity non-transferable and non-exclusive access to MedisysCare Link to permit those individuals listed on Exhibit A attached hereto and made part hereof, as same may be amended from time to time (collectively “Authorized Users”), to electronically access and use MedisysCare Link solely for accessing and reviewing medical records and other information, images and content related to the provision of healthcare to patients of such Outside Entity (the “System License”).
2. Outside Entity agrees to provide any background and credentialing information regarding proposed Authorized Users that may be requested by MediSys to evaluate whether to grant such Authorized Users access to MedisysCare Link.
3. Outside Entity understands that such access and use shall be limited to that achieved through unique access codes provided to each individual Authorized User by MediSys. No Authorized User shall share his or her unique access codes with any other person or entity.
4. Outside Entity further acknowledges and understands that MediSys may terminate individual Authorized Users’ access or the System License at any time for any reason without penalty, regardless of any effect such termination may have on Outside Entity’s operations. MediSys will endeavor to notify Outside Entity of any such termination at least thirty (30) days prior to such termination becoming effective, provided that nothing herein shall obligate MediSys to provide such notice. Without limiting the generality of the foregoing, Outside Entity expressly agrees that MediSys may terminate this Agreement and all of the Authorized Users’ access to MedisysCare Link immediately if MediSys determines, in its sole discretion, that Outside Entity, or Outside Entity’s directors, officers, employees, contractors or agents have violated a material provision of this Agreement.
5. Outside Entity acknowledges and agrees that any hardware, software, network access or other components necessary for Outside Entity to access and use MedisysCare Link must be obtained and maintained by Outside Entity at Outside Entity’s sole cost and expense, which hardware, software, network access or other components shall meet the minimum specifications for access and use of MedisysCare Link from time to time designated by MediSys.

# Intellectual Property Rights. This Agreement does not grant to Outside Entity or its Authorized Users any ownership interest in MedisysCare Link. Rather, Outside Entity has a license to access and use MedisysCare Link solely as permitted under the terms of this Agreement. Ownership of MedisysCare Link and all intellectual property rights in it shall remain at all times with MediSys and, as applicable, Medisys’ third party vendors. Any copy, modification, revision, enhancement, adaptation, translation, or derivative work of or created from MedisysCare Link shall be owned solely and exclusively by Medisys, and/or as applicable, Medisys’ third party vendors, as shall all patent rights, copyrights, trade secret rights, trademark rights, and all other proprietary rights, worldwide (all of the foregoing rights taken together being referred to collectively herein as “Intellectual Property Rights”) therein and thereto.

# Use or Disclosure of Information in EHR; Ownership of Data.

1. Prior to accessing the EHR of any patient which neither Medisys nor any Data Provider has previously obtained an authorization, Outside Entity shall obtain the consent of that patient, or his or her parent, guardian, surrogate, healthcare proxy, legally authorized representative or qualified person (each a “Qualified Person”) in a form approved by MediSys from time to time. Outside Entity shall retain all such patient consents for the duration of this Agreement and for a period of six (6) years thereafter, and shall provide copies of all such consents to MediSys upon request.
2. Outside Entity shall not use or disclose any patient information obtained through MedisysCare Link in any manner that would constitute a violation of federal or state law, including, but not limited to, the health Insurance Portability and Accountability Act of 1996 and all regulations enacted thereunder (“HIPAA”). Outside Entity shall ensure that its directors, officers, employees, contractors, and agents use or disclose patient information obtained through MedisysCare Link only in accordance with the provisions of this Agreement and all applicable law. Outside Entity shall, and shall cause all of its directors officers, employees, contractors, and agents to comply with all policies and procedures of MediSys in effect from time to time applicable to the use of MedisysCare Link.
3. Outside Entity acknowledges and agrees that each Data Provider owns all right, title and interest in and to the patient data it enters into the applicable EHR, and such rights shall at all times remain with such Data Providers. Outside Entity shall not compile, de-identify and/or distribute analyses to third parties utilizing any data received through MedisysCare Link without express written permission from MediSys.

# Managing Access.

1. Outside Entity shall notify MediSys of the identity of and contact information for Outside Entity’s Privacy Officer and shall update such information as soon as practicable in the event of any change. Outside Entity shall also designate and provide contact information for a liaison to coordinate addition or removal of Authorized Users. The liaison is responsible for managing the addition, modification and termination of MedisysCare Link access by employees and agents of Outside Entity.
2. Before accessing MedisysCare Link for the first time, each Authorized User must acknowledge agreement with the MedisysCare Link Terms and Conditions as in effect at the time of first access. Such Terms and Conditions are subject to change at any time in the sole discretion of MediSys. By accessing MedisysCare Link, each Authorized User agrees to be bound by the Terms and Conditions as amended. Outside Entity agrees to ensure that each Authorized User approved for access under this Agreement adheres to the requirements of this Agreement, the Terms and Conditions and any applicable policies and procedures and agrees that a breach thereof by any Authorized User shall constitute a breach of this Agreement by Outside Entity. Outside Entity shall cause each Authorized User to complete appropriate training on the use of MedisysCare Link and the proper use and disclosure of patient information obtained through MedisysCare Link.
3. Access to MedisysCare Link shall be provided to those employees and agents of Outside Entity who require access to patient information of the type which may be obtained through MedisysCare Link to perform his or her duties to the Outside Entity and its patients. A complete list of Authorized Users through Outside Entity is attached hereto as Exhibit A, which list shall be deemed updated if additional Authorized Users are added through Outside Entity or due to other personnel changes within Outside Entity. Outside Entity shall notify MediSys as soon as practicable, but in any event not later than 24 hours after any Authorized User is separated from Outside Entity or his or her job functions have changed such that he or she no longer requires access to MedisysCare Link to perform his or her duties for or on behalf of Outside Entity, and so that any access codes or logins can be disabled.

# Reporting of Unauthorized Use of MedisysCare Link.

1. As soon as practicable, but in any event within 24 hours of becoming aware, Outside Entity shall report to MediSys any unauthorized use of or access to MedisysCare Link by Outside Entity, its officers, directors, employees, contractors, or agents or any security breach or any potential security breach of Outside Entity’s computer systems or network. Such notice shall be made in writing and shall be sent to MediSys Health System, Attention: Care Connect.
2. Outside Entity shall cooperate with MediSys’ investigation into any unauthorized access or use to MedisysCare Link or security breach or potential security breach and shall, at Outside Entity’s sole cost and expense, mitigate any known harm caused by such unauthorized access or use or security breach and shall implement all reasonable corrective actions necessary to prevent any such further unauthorized access or use or security breach from occurring in the future.

# Indemnification. Outside Entity agrees to indemnify and hold harmless MediSys, the Data Providers, and each of their affiliates, directors, officers, employees and agents, from and against any and all claims, costs, losses, damages, liabilities, expenses, demands, and judgments, including litigation expenses and attorney’s fees, which may arise from or relate to the breach by Outside Entity of any term or condition of this Agreement. Such indemnification shall include but shall not be limited to the full cost of any breach notification required to be made under HIPAA as a result of any breach of this Agreement by Outside Entity, or a security breach Outside Entity’s computer systems or network.

# No Warranties: Limitation of Liability.

1. TO THE FULLEST EXTENT PERMISSIBLE UNDER ANY APPLICABLE LAW, RULE OR REGULATION, MEDISYS IS PROVIDING MEDISYSCARE LINK, AND ALL INFORMATION ACCESSIBLE OR PROVIDED THOUGH MEDISYSCARE LINK “AS IS” AND WITHOUT REPRESENTATION OR WARRANTY, AND HEREBY DISCLAIMS ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, WRITTEN OR ORAL, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY, SUITABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, SECURITY, ANY WARRANTY THAT AVAILABILITY OR OPERATION WILL BE UNINTERRUPTED OR ERROR FREE, AND/OR ANY WARRANTY TO PROVIDE ADEQUATE TECHNICAL SUPPORT.
2. To the fullest extent permitted by law, MediSys shall not be liable under any circumstances for special, indirect, incidental, punitive or consequential damages that Outside Entity may incur as a result of MediSys’s actions or omissions, even if MediSys was aware of the possibility for such damages. In no circumstance shall MediSys be liable to Outside Entity for any act or failure to act by any third party. If Outside Entity is dissatisfied with MedisysCare Link, Outside Entity’s sole and exclusive remedy is to terminate this Agreement. If any portion of the foregoing limitation is found to be void or unenforceable, the aggregate liability of MediSys to Outside Entity for any damages resulting from or relating to the use of MedisysCare Link shall be limited to $100.00.

# Outside Entity Responsibility for Medical Decisions. OUTSIDE ENTITY AGREES THAT MEDISYSCARE LINK IS A TOOL AVAILABLE TO OUTSIDE ENTITY PERSONNEL AND PROVIDERS FOR ACCESSING PATIENT INFORMATION AND IS NOT INTENDED IN ANY WAY TO ELIMINATE, REPLACE OR SUBSTITUTE FOR, IN WHOLE OR IN PART, MEDICAL JUDGMENT AND ANALYSIS OF THE PATIENT’S CONDITION. OUTSIDE ENTITY AGREES THAT THE SOLE AND EXCLUSIVE RESPONSIBILITY FOR ANY MEDICAL DECISIONS OR ACTIONS MADE BY OUTSIDE ENTITY PERSONNEL WITH RESPECT TO A PATIENT’S MEDICAL CARE AND FOR DETERMINING THE ACCURACY, COMPLETENESS OR APPROPRIATENESS OF ANY DIAGNOSTIC, CLINICAL OR MEDICAL INFORMATION WITH REGARD TO PATIENTS PROVIDED THROUGH MEDISYSCARE LINK RESIDES SOLELY WITH OUTSIDE ENTITY.

# Miscellaneous.

1. Any reference made herein to any provision of law or regulation shall be a reference to such section as in effect and as same may be amended from time to time.
2. This Agreement may not be amended except in a writing signed by both parties hereto. Both parties hereto agree that this agreement shall be amended to comply with any and all state or federal laws rules, or regulations, including without limitation any future laws, rules or regulations.
3. Outside Entity may not assign any of its rights or obligations under this Agreement without the express prior written consent of MediSys, which consent may be given or withheld it is sole discretion. Any attempted assignment in violation of this Agreement shall be null and void and of no effect whatsoever.
4. The respective rights and obligations of either party which are, buy their terms, intended to survive the termination of this Agreement, shall survive any termination of this Agreement.
5. Except as otherwise expressly provided herein, all notices which are required to be given hereunder shall be in writing and shall be deemed to have been duly given (a) when delivered personally, (b) the next business day following the day on which the same has been delivered prepaid to a nationally recognized overnight courier service, or (c) three (3) days after sending by registered or certified mail, postage prepaid, return receipt requested, in each case to the address first set forth above to the attention of the person signing below, or to such other person at such other address as the party may designate by giving notice.
6. In the event that any provision of this Agreement is adjudged by any court of competent jurisdiction to be void or unenforceable, all remaining provisions hereof shall continue to be binding on the parties hereto with the same force and effect as though such void or unenforceable provision had been deleted.
7. No failure or delay in exercising any right, power or remedy hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or remedy hereunder preclude any other further exercise thereof or the exercise of any other right, power or remedy. The rights provided hereunder are cumulative and not exclusive of any rights provided by law.
8. This Agreement including all Exhibits and documents referenced herein constitute the entire agreement between the parties hereto relating to the subject matter hereof, and supersede any prior or contemporaneous verbal or written agreements, communications and representations relating to the subject matter hereof.
9. Nothing in this Agreement shall be construed to create an agency relationship between the MediSys and Outside Entity.
10. This Agreement may be signed in two or more counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument. A copy of this Agreement bearing a facsimile signature shall be deemed to be an original.
11. This Agreement shall be construed an interpret in accordance with New York law, without regard to the conflicts of law provisions thereof. All actions or proceeding arising under this Agreement shall be brought in the state or federal courts sitting in Queens County, New York and both parties consent to the personal jurisdiction of such courts.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed as of the date and year first set forth above.

MEDISYS HEALTH NETWORK, INC.

By:

 Name:

 Title:

[OUTSIDE ENTITY]

By:

 Name:

 Title:

**Exhibit A**

**Authorized Users**