

HOAG-ENABLED HEALTH INFORMATION EXCHANGE END USER LICENSE AGREEMENT

Introduction

Important: Please read the terms and conditions of this End User License Agreement (“Agreement”) before clicking “I Accept.” By accepting this Agreement, You agree to be bound by its terms. This Agreement contains the terms and conditions that govern access to the patient data contained in the Hoag-enabled Community Health Information Exchange (“HIE”) by all HIE Participants and their Authorized Users (both as defined below).

Definitions

In this Agreement, the words:

- “Authorized User” means either an HIE Participant (as defined in a valid Hoag-Enabled Community Health Information Exchange Data Participation Agreement) or a person that an HIE Participant has authorized to use the HIE hereunder on the HIE Participant’s behalf.
- “HIE Participant” means the person or entity registered with the HIE to provide medical services or supplies to HIE patients.
- “HIE” means, collectively, all services, functionality, content, and data made available by the Hoag-enabled Community Health Information Exchange through the Medicity ProAccess HIE Participant Portal product.
- “Hoag” means Hoag Memorial Hospital Presbyterian and its Affiliates.
- “You” means either the HIE Participant or the Authorized User utilizing the HIE through the Medicity ProAccess HIE Participant Portal pursuant to the Terms of this Agreement.

Your Rights to Use the Hoag-enabled HIE

The HIE hereby gives Authorized Users permission to access the HIE, subject to the conditions and limitations set forth in these Terms, as they may be amended from time to time. Authorized Users may use the HIE only while this Agreement remains in effect. You represent and warrant that You are using or downloading patient information contained on the HIE for the following purposes and only to the extent permissible under all applicable laws regarding the privacy of patient information: (i) for treatment of those patients under Your care; (ii) to collect payment for the services You provide to Your patients; (iii) to conduct Your healthcare operations; and/or (iv) to comply with the laws that govern health care. All patient information viewed through the HIE is strictly confidential and is subject to the protections of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and the privacy and security regulations promulgated pursuant to HIPAA, including, but not limited to, 45 C.F.R. Parts 160 and 164 Subparts C and E, as may be amended from time to time.

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Your Use of Content You Obtain by Using the HIE

Authorized Users may not, except as specifically permitted by these Terms (notably those purposes specified in the previous section, headed “Your Rights to Use the Hoag-enabled HIE”) and by applicable laws and regulations:

- Use, reproduce or copy all or part of the data or other content You obtain by using the HIE;
- Change or delete any proprietary notices from materials downloaded or printed out from the HIE;
- Use the data or other content You obtain by using the HIE for Your own benefit or the benefit of a third party other than the patient;
- Transmit or provide any data or other content You obtain by using the HIE to a third party;
- Incorporate any data or other content You obtain by using the HIE in a product designed, developed, marketed, sold or licensed by You or on Your behalf or utilize any such data or other content for any marketing or commercial purposes whatsoever.

As an Authorized User, You may not in any event use the HIE, or any data or other content You obtain by using the HIE, in a manner contrary to any applicable law or regulation. These provisions will survive any termination of this Agreement.

Prohibition on Redisclosure

Except as specifically permitted by these Terms, Authorized Users may not make further disclosures of patient information, including information related to alcohol or drug abuse, unless further disclosure is expressly permitted by the written consent of the person to whom it pertains, or as otherwise permitted by federal or state laws.

Monitoring

The HIE will conduct regular audits of Your use of the HIE to ensure compliance with the Agreement.

Effective Time; Termination

This Agreement shall take effect at the time You first access the HIE and shall remain in effect until said Agreement is terminated.

Either party may terminate this Agreement at any time, with or without cause, upon ten (10) days' prior notice. HIE Authorized Users who wish to terminate this Agreement must do so in writing (via US Mail, Fax or email) by contacting the following:

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Health Information Exchange
Hoag Memorial Hospital Presbyterian
One Hoag Drive, PO Box 6100
Newport Beach, CA 92658
Tel (949)764-5151

In addition, the Hoag-enabled HIE may terminate this Agreement immediately if: (i) You breach the Terms of this Agreement; (ii) in the HIE's good faith judgment, audit results demonstrate unusual use of the HIE from Your account; or (iii) You have not used the HIE at all for a period of six (6) months.

In the event of Termination for any reason, Your rights to use the HIE shall end immediately and You must destroy all copies of relevant software on Your computer or in Your possession.

All Authorized Users on an HIE Participant's staff are the responsibility of said HIE Participant, which HIE Participant assumes full and complete liability for all consequences of misuse of access to patient information by any of HIE Participant's Authorized Users, including violation of state and federal laws related to HIPAA.

Survival

Your obligations to comply with the Terms described under the headings "Your Use of Content You Obtain by Using the HIE" and "Release of Liability and Indemnification" shall survive any termination of this Agreement and You shall continue to be bound by those terms.

Ownership of Portal, Content, Software and Services

The HIE is the owner or licensor of all rights in the HIE, its content, software, and services, unless expressly and prominently specified otherwise in HIE content. You have no rights to such content, software or services except as expressly granted in these Terms. The name "Hoag-enabled Community Health Information Exchange" and the logos or other proprietary marks of Hoag Memorial Hospital Presbyterian and HIE licensors and partners are trademarks of Hoag or its licensors and partners. No right, title or interest in those trademarks is granted to You in these Terms.

Confidentiality and Use

An HIE Participant may not permit any person who is not one of said HIE Participant's Authorized Users to use the HIE. You agree to be solely responsible for maintaining the confidentiality of Your unique username and password for the HIE, and for all use of the HIE made with Your username and password, and for all use of the data and other content obtained by using Your username and password. HIE Participant agrees that HIE Participant is ultimately responsible for any use of the HIE by HIE Participant's Authorized Users, that all such use is subject to these Terms, and that HIE Participant shall inform all of HIE Participant's Authorized Users of these Terms and their obligations to abide by them and regularly re-inform said Authorized Users regarding said obligations. You understand and agree that any and all information obtained from the HIE is not to be used as a substitute for the medical judgment of a qualified health care professional. HIE Participant is solely responsible for all decisions and actions taken or not taken involving patient care, utilization management, and quality management for their respective

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patients and/or clients resulting or in any way related to the use of the HIE or any of the data or other content obtained by using the HIE.

No Warranty

The HIE expressly disclaims any warranty for the HIE. The HIE is provided "As Is" without any express or implied warranty of any kind, including but not limited to the warranties of merchantability, non-infringement, or fitness of a particular purpose. The HIE does not warrant or assume responsibility for the accuracy or completeness of any information, graphics, links or other items contained within the HIE. The HIE makes no warranties respecting any harm that may be caused by the transmission of a computer virus, worm, time bomb, logic bomb, or other such computer program. The HIE further expressly disclaims any warranty or representation to Authorized Users or to any third party.

Release of Liability and Indemnification

In consideration for the HIE granting You permission to use the HIE, Authorized Users expressly release and hold harmless Hoag and the HIE, as well as their trustees, officers, directors, employees, agents and affiliates from any and all claims, liabilities, demands, causes of action, costs, expenses, and damages of every kind and nature, in law, equity, or otherwise, arising out of or in any way related to Your use of the HIE, or any of the data or other content obtained by using the HIE, whether or not arising from any acts or omissions by Hoag, the HIE or their trustees, officers, directors, employees, agents or affiliates.

In addition, You shall indemnify and hold harmless Hoag and the HIE, their officers, directors, agents, affiliates, and employees, against all actual and direct losses, liabilities, damages, claims, costs or expenses (including reasonable attorney's fees) they may suffer as the result of third-party claims, demands, actions, investigations, settlements or judgments against them arising from or in connection with any breach of this Agreement, or from any claim of any nature or any wrongful acts or omissions, by You or Your Authorized Users or Your other employees, officers or agents.

These provisions shall survive any termination of this Agreement.

No Responsibility for Links to or from Other Sites.

The HIE may contain links to other Web sites, and other Web sites may provide links to the HIE. These links are provided for Your convenience only. The HIE does not control these other sites and assumes no liability or responsibility for them, including any content or services provided to You by such sites. You should not consider any link to or from another site as an endorsement of that site by Hoag or the HIE.

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Changes to HIE or this Agreement

The HIE may, at any time, enhance and/or make changes to the HIE, the terms and conditions in this Agreement and/or any other policies or conditions that may govern the use of the HIE and will provide notice of such changes, in its sole discretion, via hardcopy, e-mail or by posting such changes on the HIE. Your continued access or use of the HIE shall be deemed to be Your notification and acceptance of these changes.

Availability of the HIE

Access to the HIE may be limited during periods of high volume, systems upgrades and/or daily maintenance, or for other unanticipated reasons. The HIE shall not be liable if an HIE Participant is unable to access the HIE or is unable to complete transactions through it.

The HIE provides user support.

Security of Communications on the Internet and Events Beyond the HIE's Control

HIE Participants access the HIE through the Internet. Use of the Internet is solely at an HIE Participant's own risk and is subject to all applicable local, state, national, and international laws and regulations. While the HIE has endeavored to create a secure and reliable site, the HIE shall not be responsible for the security of information transmitted via the Internet, the accuracy of the information contained on the HIE, or for the consequences of any reliance on such information.

Neither Hoag nor the HIE shall be liable for any loss resulting from a cause over which either Hoag or the HIE does not have direct control, including but not limited to failure of electronic or mechanical equipment or communication lines, telephone or other interconnect problems, interruption of communications or data processing services, unauthorized access, theft, operator errors, severe weather, earthquakes, or natural disasters, strikes or other labor problems, wars, or governmental restrictions.

Ownership, License and Restrictions on Use of Materials

Authorized Users are hereby granted a non-exclusive, non-transferable, limited license during the term of this Agreement to view and use the data and other content obtained by using the Hoag-enabled HIE solely in connection with the provision of health care services. Except as expressly provided above, (1) no part of the information in or about the HIE, including but not limited to, data and other content retrieved from it and the underlying code, may be reproduced, republished, copied, transmitted, or distributed in any form or by any means, (2) nor shall materials from this site be stored in any information storage and retrieval system without explicit prior written permission from the HIE. Except for the limited license granted above, the HIE reserves all right, title, and interest, including all intellectual property rights, in and to the HIE.

Governing Law; Legal Jurisdiction; and Statute of Limitations

The laws of the State of California govern this Agreement, without regard to conflict of law principles, and Your access to and use of the HIE, and the data and other content obtained thereby, under this Agreement. You hereby submit to the exclusive jurisdiction of the courts in the State of California with venue in Orange County and waive any jurisdictional venue or inconvenient forum objections to such courts.

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You acknowledge and agree that obligations of the HIE, if any, are solely the obligations of the HIE, and that the County of Orange, State of California, shall have no obligation or liability for said obligations.

Miscellaneous Terms

No waiver of any term of this Agreement will be valid unless in writing and acknowledged in writing by the waiving party. If any portion of this Agreement is adjudged invalid or unenforceable by a court of competent jurisdiction, such provision will be enforced to the maximum permissible extent to effect the intent of the parties, and the remaining portions will remain in full force and effect. No joint venture, partnership, franchise, employment, or agency relationship exists between You and the HIE, or any other party participating in the HIE as a result of this Agreement or Your use of the HIE. This Agreement constitutes the entire agreement between the parties regarding its subject matter; provided, however, that You will also be subject to any additional terms and conditions of which You are notified and to which You manifest consent by continued use of the HIE.

Acceptance

The HIE Participant receiving this Agreement and using the logon credentials represents and warrants, and in accessing the HIE will be deemed to repeat such representation and warranty, that (a) the HIE Participant is duly organized and validly existing under the laws of the jurisdiction in which it was founded or incorporated; (b) the HIE Participant has full power and authority to enter into and perform its obligations under this Agreement; and (c) this Agreement has been duly authorized, executed, and delivered on the HIE Participant's behalf by persons empowered to do so.

The Authorized User receiving this Agreement and using the logon credentials represents and warrants that the Authorized User has been granted access to the HIE in his or her capacity as a member of the staff of HIE Participant.