INTERNET ACCESS AGREEMENT
Laboratory Test Ordering and Results Query

This Internet Access Agreement (this "Agreement"), effective this _____ day of _____, 20__ (the "Effective Date"), is by and between ACM Medical Laboratory, Inc. a New York corporation with its principal office located at 160 Elmgrove Park, Rochester, New York 14624 ("ACM"), and _____ a _____ licensed to practice medicine in the State of _____ with an office located at _____ (the "Client").

WHEREAS, ACM owns and operates a clinical laboratory that performs various tests and examinations of material derived from the human body for the purpose of providing information to various qualified medical practitioners ("clients") for the diagnosis, prevention or treatment of disease and/or the assessment of medical conditions; and

WHEREAS, ACM routinely transmits and receives laboratory test orders and laboratory result reports to and from its clients via facsimile, telephone, mail and other forms of media ("traditional media"); and

WHEREAS, ACM has developed a proprietary software application that enables its clients to (i) order laboratory tests via the internet ("ACM Quik Order"), and (ii) access laboratory results and reports associated with laboratory tests ordered through ACM ("ACM Quik Reports"), in addition to obtaining such results and reports through traditional media; and

WHEREAS, Client desires to order laboratory tests through ACM Quik Order and to use ACM Quik Report to access the laboratory results and reports of patients for whom Client has ordered laboratory tests through ACM;

NOW, THEREFORE, in consideration of the foregoing premises and the mutual promises herein contained, and intending to be legally bound hereby, ACM and Client agree as follows:

1.   Services. ACM will provide Client with access to ACM Quik Order and to ACM Quik Report such that Client will be able to order laboratory tests and to view and print ACM laboratory results and reports for Client's patients via the internet. It is expected that the ACM Quik Order and ACM Quik Report will run on Client's computer system, utilizing standard browser software, so long as that system has access to the internet and incorporates the minimum software requirements set forth in Appendix A. Client acknowledges and agrees that it is solely responsible for informing and advising its patients that Client may order laboratory tests and access test results

and reports via the internet through ACM Quik Order and ACM Quik Report and, if necessary, will obtain an authorization from its patients which complies with the requirements of the Health Insurance Portability and Accountability Act of 1996 and the regulations enacted thereunder, as the same may be amended and modified from time to time ("HIPAA").

2. <u>Term</u>. This Agreement shall commence upon the Effective Date and shall continue until terminated in accordance with the terms hereof.

(a) Either party may terminate this Agreement at any time, with or without cause, upon five (5) business days' written notice to the other party.

(b) ACM may terminate this Agreement, effective immediately upon written notice to Client, upon its reasonable good faith belief that Client (i) has acted or failed to act in any manner which jeopardizes the confidentiality or security of the test orders and results accessible through ACM Quik Order and ACM Quik Report, (ii) is allowing or has allowed use of Client's password or access to ACM Quik Order or ACM Quik Report by any party other than Client, without the prior written consent of ACM or as otherwise set forth in Section 6 below, or (iii) has failed to advise and/or obtain the consent of any of its patients regarding the transmission by internet of the patient's laboratory test orders, reports and/or results.

(c) Client acknowledges and agrees that it has an affirmative duty to notify ACM in the event that Client is not using the services provided pursuant to this Agreement.

(d) Upon termination of this Agreement, Client shall (i) immediately cease its use of ACM Quik Order and ACM Quik Report, or (ii) promptly return to ACM any and all written materials provided to it by ACM, if any, including user documentation, and (iii) remove, and return or delete, all software, if any, provided to Client by ACM in furtherance of Client's access to ACM Quik Order and ACM Quik Report.

3. <u>Error Reporting</u>. Client agrees to immediately report to ACM the discovery of any discrepancies, anomalies or errors detected in ordering laboratory tests via ACM Quik Order and/or in the results or reports obtained via ACM Quik Report, and to cease use of ACM Quik Order and ACM Quik Report until such time as ACM has notified Client that said errors or anomalies have been fully corrected.

4. <u>Proprietary Information</u>. Client acknowledges and agrees that ACM shall have and retain sole and exclusive rights, title and interest in and to ACM Quick Order and ACM Quick Report, and any and all tangible, intangible, proprietary and intellectual property rights therein or thereto or associated therewith (collectively, the "Proprietary Information"). In furtherance thereof, Client agrees to execute any and all instruments, assignments and other documents, and to take any and all such other actions, as ACM may reasonably request to confirm or effect ACM's ownership of all rights, title and interest in and to the Proprietary Information. Client acknowledges that the Proprietary Information constitutes valuable proprietary trade secrets of ACM, the contents of which

were developed by or on behalf of ACM with substantial time, effort, creativity and expense. Client shall not (and shall not permit any other person to), except as otherwise provided herein or by applicable law, reproduce, duplicate, copy, translate, alter, modify, disassemble, decompile, reverse engineer or create any derivative works based on any software included in the Proprietary Information or attempt to discover any underlying source code of any such software or otherwise reduce any of such software to human-readable form.

5. Confidentiality of Patient Data. Any laboratory test results or reports that are provided to Client are for the purpose of advising patients on health and medical issues, and form part of a patient's medical record as that term is defined by the New York Public Health Law and are subject to all the protections against disclosure granted thereunder and under other relevant state and federal law. Client and ACM agree as follows:

(a) Medical records of patients and medical information transmitted through ACM Quik Order and ACM Quik Report relating to the ordering of laboratory tests and/or the reporting of results (the "Patient Data") shall be regarded as confidential. Both parties shall comply with all applicable federal and state laws and regulations regarding the transmission, use and disposition of such records and Patient Data.

(b) Client is only permitted to view Patient Data relating to active patients of Client and then only for the purpose of providing treatment to those patients.

(c) Without the prior written consent of ACM, Client shall not manipulate, aggregate, integrate, compile, merge, reorganize, regenerate, transfer or otherwise use the Patient Data, except for purposes of Client's diagnosis and medical treatment of Client's patients.

(d) Client shall not provide the Patient Data to any other person or entity, except (i) as required or permitted by applicable law, and (ii) to another qualified healthcare professional for purposes of consultation or treatment of the person about whom the Patient Data relates by such other qualified healthcare professional.

(e) Any and all information relating to the terms, conditions and substance of this Agreement shall remain within the strictest confidence and Client shall not disclose such information to any third party.

(f) The provisions of this Section 5 shall survive the termination of this Agreement.

6. Access to Test Ordering, Results and Reports.

(a) Client understands and agrees that its access to ACM Quik Order and ACM Quik Report is strictly limited to Client. In circumstances limited to those set forth herein, Client

may share such access with other qualified medical personnel associated with or employed by Client within Client's office ("Users"), provided:

(i)   Client identifies and obtains the signature of each such User on the attached Appendix B, in order to enable ACM to provide each such User with his or her own password for access to ACM Quik Order and ACM Quik Report;

(ii)   Client covenants and agrees that all User information provided to ACM will at all times be current, accurate and complete;

(iii)   ACM may terminate any User's right to access ACM Quik Order and ACM Quik Report in the event that ACM discovers any error or omission in any User's information;

(iv)   Client agrees that neither it nor any of its Users will share their respective passwords with other parties; and

(v)   Client agrees that neither it nor any of its Users will enable other parties to access ACM Quik Order or ACM Quik Report, via their respective passwords or otherwise.

(b)   Client acknowledges and agrees that it is solely responsible for its acts and omissions and the acts and omissions of its Users, and for any damages incurred by ACM as a result thereof. Client agrees to notify ACM immediately if a User leaves Client's employ, or otherwise loses his or her privileges as a User, so that ACM may remove such User's username and password from the system.

(c)   Client acknowledges and agrees that it is solely responsible for reporting to ACM any possible or actual violation of the confidentiality of Patient Data through use of ACM Quik Order and Quik Report that comes to Client's attention, whether caused by Client or any other individual, and whether or not such violation results in actual disclosure of Patient Data to an individual or entity not authorized by state or federal law to receive such Patient Data. Upon learning of any violation of the confidentiality of any patient Data, Client and ACM will cooperate with one another to satisfy any breach notification requirements contained in any applicable law.

7.   Product Alteration. Client acknowledges that ACM reserves the right to suspend, alter, amend, modify, revise and/or replace or terminate ACM Quik Order and ACM Quik Report or the functionality thereof at any time, without notice to Client. Client acknowledges and agrees that any such changes may require ACM to restrict or otherwise limit access to ACM Quik Order and ACM Quik Report for the duration of such change, and that any such restriction or limitation shall not constitute an actionable breach under this Agreement.

8.	Use Limitations.	Client acknowledges and agrees that ACM Quik Order and ACM Quik Report are not intended to, nor is it being offered by ACM as an inducement to, replace or otherwise discontinue Client's reliance upon traditional media for the requesting and receiving of laboratory tests and test results from ACM. Client herein agrees that it shall not rely on ACM Quik Order and Quik Report as Client's sole mechanism for receiving laboratory test results and that it shall continue to receive laboratory result reports from ACM via traditional media through which Client currently receives this information. Client further agrees to use such traditional media test result reports as Patient Data for inclusion in a patient's medical record as that term is defined by New York State Public Health Law.

9.	Exclusion of Warranties. CLIENT UNDERSTANDS AND AGREES THAT ACM QUIK ORDER AND ACM QUIK REPORT ARE PROVIDED TO CLIENT "AS IS" AND, TO THE FULLEST EXTENT PERMITTED BY LAW, ACM HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, OF ANY KIND WHATSOEVER, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF MERCHANTABILITY. FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

10.	Limitation of Liability. Under no circumstances shall ACM be liable to Client for any indirect, consequential, incidental, special, punitive or exemplary damages, including without limitation damages for loss of profits, disclosure of confidential information, invasion of privacy, business interruption, loss of information or for the procurement of substitute goods or services, arising out of or relating to Client's use of ACM Quik Order and/or ACM Quik Report, whether such damages are sought directly or indirectly by Client or by any patient or any representative of a patient, or by any other third party, even if ACM has been advised of the potential for such damages and whether such damages arise in contract, negligence, tort, under statute, in equity, at law or otherwise. In no event shall ACM's aggregate liability to Client under this Agreement exceed the total amount of fees actually paid by Client to ACM under any agreement(s) between ACM and Client during the previous twelve (12) months.

11.	Indemnity. Client agrees to defend, indemnify and hold ACM and its officers, directors, employees, agents and representatives harmless from and against any losses, expenses, costs or damages (including court costs and reasonable attorneys' fees) arising from, incurred as a result of, or in any manner related to:

(a)	Client's breach of the terms of this Agreement;

(b)	Client's unauthorized or unlawful use of ACM Quik Order and ACM Quik Report; or

(c)	The unauthorized or unlawful use of ACM Quik Order and ACM Quik Report by any person using Client's identification, password or any other means of accessing ACM Quik

Order and ACM Quik Report that relates to any action or inaction by Client which resulted in such person's possession or knowledge of such identification or password.

12. Prohibition Against Assignment. Client may not assign or otherwise transfer this Agreement or any of its rights or obligations hereunder to any other person or entity. Any attempted assignment in violation of this Section 12 shall be null and void and of no effect whatsoever, and shall result in the automatic termination of this Agreement.

13. Waiver. This Agreement may not be changed or modified, nor may any provision hereof be waived, except in writing signed by ACM and Client.

14. Severability. If any provision of this Agreement is found to be illegal, invalid or unenforceable, that provision shall not affect the validity or enforceability of this Agreement as a whole, and this Agreement shall then be construed in all respects as if such invalid or unenforceable provision was omitted.

15. Governing Law; Jurisdiction and Venue. This Agreement shall be governed by and enforced under the laws of the State of New York without giving effect to the conflicts of law principles thereof. Any suit, action or proceeding arising out of, or with respect to, this Agreement shall be brought in the Courts of Monroe County, New York or in the United States District Court for the Western District of New York, and the parties hereto hereby accept the exclusive jurisdiction of those courts for the purpose of any suit, action or proceeding.

16. Authority/Entire Agreement. Client acknowledges that it has read this Agreement, and understands and agrees to be bound by its terms and subject to its conditions. Client further acknowledges and agrees that, in the event it provides for access by Users to Patient Data from ACM Quik Order and Quik Report in accordance with Section 6 above, that it is representing that it has the authority to limit and control access to any such Users and may bind them to the terms of this Agreement. Client further agrees that this Agreement is the complete and exclusive statement concerning the subject matter of the agreement between ACM and Client, and supersedes any proposal(s), or prior agreement(s), whether written or oral, relating to the subject matter of this Agreement.

17. Independent Contractor. ACM and Client acknowledge and agree that the relationship created by this Agreement is that of independent contractors. Nothing contained in this Agreement shall be construed to constitute either party as an employee, partner or joint venturer of or with the other party, nor shall either party have any authority to bind the other party in any respect, it being intended that each party shall be responsible for its own actions.

18. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument.

19.   Notices. All notices given pursuant to this Agreement shall be in writing and delivered by hand or sent via email, facsimile or certified mail, return receipt requested and postage prepaid, addressed to the party for whom it is intended at its address first set forth above or to such email address or facsimile number as provided to the other party for purposes of accepting notice. Each such notice shall be deemed to have been given on the date of its receipt by the party for whom it was intended.

IN WITNESS WHEREOF, the duly authorized representatives of the parties hereto have executed this Agreement as of the Effective Date.

CLIENT:_____   ACM MEDICAL LABORATORY, INC
(Print Name of Group/Practice/Entity)

Signature: _____   Signature: _____

Name: _____   Name: _____

Date: _____   Date: _____

APPENDIX A

Client's computer equipment must meet the following hardware and software requirements for use of ACM Quik Order and ACM Quik Report:

Internet Access

Direct, or
Dial-up

Software

Internet Explorer 5.0 or higher

APPENDIX B

<u>INTERNET ACCESS AGREEMENT</u>
<u>FORM FOR ADDITION/REACTIVATION or REMOVAL OF STAFF</u>

DATE:_____

CLIENT:_____   DR'S ACCT#:_____
       (Print name of Group/Practice/Entity)

{ } Add User   { } Reactivate User   { } Remove User

AUTHORIZED USERS:

1. _____   4. _____
       PRINT NAME   PRINT NAME

  _____   _____
        SIGNATURE   SIGNATURE

2. _____   5. _____
       PRINT NAME   PRINT NAME

  _____   _____
        SIGNATURE   SIGNATURE

3. _____   6. _____
       PRINT NAME   PRINT NAME

  _____   _____
        SIGNATURE   SIGNATURE

Contact your Representative or fax completed form to (585) 247-1254

** The above addition, reactivation or removal of any staff member is held to the agreed terms stated in the original INTERNET ACCESS AGREEMENT. Please allow 5-7 business days for set up.

REQUEST SUBMITTED BY:_____
                      (Signature of Provider or Authorized Provider Designee Required

RETURN ASSIGNED USERNAMES/PASSWORDS TO:_____
                                   (Print name of Group/Office contact)
              PHONE #: _____
              FAX #: _____
              EMAIL: _____