

## EXTERNAL ACCESS AGREEMENT

This Agreement (the “Agreement”) is made and entered into as of this \_\_\_ day of \_\_\_\_\_, 20\_\_\_ (the “Effective Date”) by and between Allina Health System, a Minnesota non-profit corporation (“Allina”) and \_\_\_\_\_, a \_\_\_\_\_ (the “External Business User” or “EBU”).

### RECITALS

1. Allina and EBU have entered into, or may enter into, one or more agreements with each other or other parties (each, an “Allina/EBU Agreement,” and collectively, the “Allina/EBU Agreements”) for which EBU’s access to Allina IS (as defined below) is required or beneficial to Allina, Allina’s affiliates, subsidiaries or customers, or EBU.
2. This Agreement grants EBU access to Allina IS and establishes the terms and conditions of such access.
3. As of the Effective Date, this Agreement supersedes and replaces any existing agreements between the parties relating to EBU’s access to, or the terms and conditions of EBU’s access to, Allina IS.

### ARTICLE 1

#### ALLINA INFORMATION SYSTEMS

- 1.1** For purposes of this Agreement, “Allina IS” means all information systems owned or operated by, or accessed under an arrangement with, Allina or any of Allina’s subsidiaries or affiliates.

### ARTICLE 2

#### GRANT OF ACCESS TO ALLINA IS

- 2.1** Grant of Access. Access to Allina IS will be determined solely by Allina and may be requested by EBU on an appropriate system security request form (a “Request Form”) identifying the system or systems to which EBU desires access. Each Request Form will be considered an addendum to this Agreement and is hereby incorporated by reference.

Access to Allina IS, as may be requested by EBU and to the extent necessary for EBU to perform certain obligations pursuant to an Allina/EBU Agreement, will be determined exclusively by Allina, in its sole discretion. EBU’s right to access Allina IS will terminate immediately upon the earlier of:

- (a) the termination or expiration of any applicable Allina/EBU Agreement; or
- (b) revocation of such access at any time, for any reason or no reason, by Allina IS.

Allina may, in its sole discretion, rescind the revocation of EBU’s access to Allina IS as set forth in section 2.1(b) and grant EBU such access to Allina IS as may be necessary or proper, in Allina’s sole discretion, in connection with any subsequent Allina/EBU Agreement.

**2.2 Method of Access.** EBU will provide Allina IS Advanced Network Services (“ANS”) with appropriate technical staff to discuss and agree upon the methods by which EBU may access Allina IS, and any encryption requirements for such access, within Allina’s designated standards. Allina retains, in its sole discretion, the right to determine the method by which EBU may access Allina IS.

**2.3 Hardware, Software and Data Connections Required for Access.** ANS will supply EBU with required technical information regarding hardware, software and data connections to Allina IS. EBU will be responsible for any necessary third party relationships to access Allina IS. Allina may, in its sole discretion, require EBU to pay all hardware, software, and data connection costs necessary for EBU to access Allina IS.

**2.4 Types of Access to Allina IS.** Allina and EBU acknowledge that, depending on circumstances, EBU’s access to Allina IS may be “interface access” (system to system) or “user access” (person to system). If EBU’s access to Allina IS is for interface access, EBU will provide ANS with appropriate technical staff to establish and test interface connectivity. Allina retains the right, in its sole discretion, to disconnect the interface, and refuse EBU access to Allina IS, at any time for security reasons.

**2.5 System Users.** EBU will identify to ANS all EBU employees or other individuals who will access Allina IS under this Agreement (“System Users”). EBU will provide Allina information regarding each System User as required by Allina, including, but not limited to, that portion of Allina IS each System User will access and the method by which each System User will access Allina IS.

EBU will promptly notify Allina of any System Users who cease to require access to Allina IS resulting from a change of responsibilities, termination of employment with EBU, or for any other reason. A prospective System User will be subject to Allina’s approval prior to receiving access to Allina IS. Allina may grant approval to System Users to access Allina IS and may terminate such access at any time, for any reason, or no reason.

EBU will ensure:

- (i) each System User complies with the terms of this Agreement; and
- (ii) no System User:
  - (a) introduces a computer virus into Allina IS; or
  - (b) takes any other action that adversely affects or damages Allina IS or the data that resides therein.

EBU is responsible for a System User’s non-compliance with the terms of this Agreement. Allina may require System Users to sign a statement acknowledging the terms of this Agreement.

**2.6 Subcontractors.** EBU will ensure that no EBU subcontractor obtains access to Allina IS unless the subcontractor has first entered into an External Access Agreement acceptable to Allina. Notwithstanding the preceding sentence, if EBU’s subcontractor is granted access to Allina IS without having entered into an External Access Agreement with Allina, such subcontractor will be deemed a System User under the terms of this Agreement and will be subject to its terms and conditions. The provisions of this section will survive termination of this Agreement.

**2.7 Limitations of Use.** EBU will not access Allina IS for any purposes not authorized in the Allina/EBU Agreements.

### **ARTICLE 3 NO LICENSE GRANTED; OWNERSHIP**

**3.1** The access granted to EBU under this Agreement is limited to Allina IS and does not and will not be construed as granting EBU a license for the use of the software programs contained in the Allina IS. Any license to the software programs contained in Allina IS will be pursuant to a separate license agreement between the parties. Under this Agreement, EBU will not and will not attempt to reverse engineer or otherwise obtain copies of the software programs contained in Allina IS or the source code of the software programs contained in Allina IS. Allina either owns or has rights to Allina IS. This Agreement does not transfer to EBU any title to or ownership of rights to Allina IS or of rights in patents, copyrights, trademarks or trade secrets encompassed in Allina IS.

### **ARTICLE 4 CONFIDENTIALITY AND SECURITY**

**4.1 Allina Proprietary Data.** EBU acknowledges that it may receive confidential and proprietary information and trade secrets concerning Allina and its business and professional activities (“Proprietary Data”). Except as may be required for access to Allina IS, EBU may not use for its own benefit or disclose to any third party the Proprietary Data of Allina without Allina’s prior consent, unless such disclosure is required by an order of a tribunal of competent jurisdiction in connection with a legal action. Without limiting the applicability of the foregoing, EBU must also treat as Proprietary Data any information or materials specifically designated as such by Allina. In the event that this Agreement is terminated for any reason whatsoever, EBU must immediately return or destroy all Proprietary Data of Allina and any analyses generated therefrom then in its possession and must destroy any electronic databases, or delete the appropriate portion thereof, that contain such information.

**4.2 Protected Health Information.** The information in Allina IS to which EBU has access pursuant to this Agreement or any Allina/EBU Agreements may contain Protected Health Information (as such term is defined in 45 C.F.R. sections 160.103 and 164.501). EBU will comply, and will cause all System Users to comply with all applicable state and federal laws regarding Protected Health Information. Without limiting the foregoing, if EBU is providing services to Allina under the Allina/EBU Agreement, EBU:

- 4.2.1** Acknowledges that in receiving, storing, processing or otherwise dealing with any information from Allina about patients, it is fully bound by the provisions of federal regulations governing Confidentiality of Alcohol and Drug Abuse Patient Records, 42 CFR Part 2; and
- 4.2.2** Undertakes to resist in judicial proceedings any effort to obtain access to Alcohol and Drug Abuse Patient Records other than as expressly provided for at 42 CFR Part 2; and
- 4.2.3** Will comply with all terms and conditions of the attached Business Associate Addendum (if any) to the extent EBU is a “Business Associate” of Allina as such term is defined

under the implementing regulations of the Health Insurance Portability and Accountability Act of 1996.

**4.3 Security Measures.** EBU will use reasonable physical and software-based measures, commonly used in the electronic data interchange field, to protect data contained in Allina IS from unauthorized access. EBU will implement and comply with and will not attempt to circumvent or bypass Allina's security policies and procedures for Allina IS.

**4.4 Password Control.** EBU will comply with the applicable provisions of Allina's Information Services policy governing resource password control.

## **ARTICLE 5 MISCELLANEOUS PROVISIONS**

**5.1 Interpretation of Agreement and Allina/EBU Agreements.** This Agreement is intended to supplement Allina/EBU Agreements and address the rights and obligations of EBU with respect to access to Allina IS. If there is a conflict between this Agreement and Allina/EBU Agreements, then the provisions that grant Allina's rights the most protection will govern. The provisions of this section will survive termination of this Agreement.

**5.2 Indemnification.** EBU will defend, hold harmless, and indemnify Allina, its officers, directors, employees, and agents from any claims, liabilities, or expenses (including reasonable attorney's fees) arising from or relating to EBU's acts or omissions in connection with this Agreement. Allina will defend, hold harmless, and indemnify EBU, its officers, directors, employees, and agents from any claims, liabilities, or expenses (including reasonable attorney's fees) arising from or relating to Allina's acts or omissions in connection with this Agreement. The indemnifying party may retain defense counsel of its choice and may control defense of the matter, but may not settle or pay any claim without the indemnified party's consent, which will not be unreasonably withheld. If a party fails to accept tender of the defense within 10 days after tender by the party seeking indemnification, then the tendering party may provide its own defense and invoice the other party for the costs of such defense (including attorney's fees) as incurred. The provisions of this section will survive termination of this Agreement.

**5.3 Term and Termination.** This Agreement will commence on the Effective Date and remain in effect until terminated by Allina.

**5.4 Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the State of Minnesota, without reference to conflict of laws principles.

*[The Remainder of This Page Is Intentionally Blank]*

**ALLINA HEALTH SYSTEM**  
710 E. 24<sup>th</sup> Street  
Minneapolis, Minnesota 55404

**[NAME OF EBU]**  
Address

By \_\_\_\_\_

By \_\_\_\_\_

Print  
Name \_\_\_\_\_

Print  
Name \_\_\_\_\_

PrintTitle \_\_\_\_\_

PrintTitle \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

Social Security or  
Federal Tax I.D. Number: \_\_\_\_\_

## **BUSINESS ASSOCIATE ADDENDUM**

**THIS ADDENDUM** is entered into by and between [insert name of Business Associate] (“Business Associate”) and [insert name of Allina entity] (“Allina”).

1. **Applicability: Conflicts.** This Addendum amends the attached agreement (the “Agreement”) to address the business associate requirements of the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations (45 C.F.R. Parts 160 and 164), as may be modified or amended from time to time (“HIPAA”). Capitalized terms used, but not otherwise defined, in this Addendum shall have the same meaning as those terms in 45 C.F.R. 160.103, 164.304 and 164.501. All references to Protected Health Information in this Addendum specifically include, but are not limited to, Electronic Protected Health Information (“ePHI”). In the event of any conflict or inconsistency between the provisions of this Addendum and the provisions of the Agreement, the provisions of this Addendum shall control. Furthermore, any ambiguity in this Addendum shall be resolved in favor of a meaning that permits Allina to comply with HIPAA. The regulations found at 45 C.F.R. Part 164, Subpart C are referred to herein as the “Security Regulations” and the regulations found at 45 C.F.R. Part 165, Subpart D are referred to herein as the “Privacy Regulations”.

2. **Obligations and Activities of Business Associate.** Business Associate agrees to not use or further disclose Protected Health Information other than as permitted or required by this Addendum or as Required By Law.

2.1 **Safeguards.** Business Associate agrees, for all Protected Health Information it creates, receives, maintains, or transmits on behalf of Allina, to implement reasonable and appropriate administrative, physical, and technical safeguards to protect the confidentiality, integrity and availability of the Protected Health Information, and to prevent use or disclosure not provided for by this Addendum.

2.2 **Report of Unauthorized Use or Disclosure; Mitigation.** Business Associate agrees to promptly report to Allina any use or disclosure of the Protected Health Information not provided for by this Addendum of which it becomes aware. Business Associate will provide any and all information reasonably requested by Allina with regard to any such unauthorized use or disclosure. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to

Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Addendum. If Business Associate creates, receives, maintains, or transmits ePHI on behalf of Allina, Business Associate shall promptly report to Allina any Security Incident involving the ePHI of which Business Associate becomes aware.

2.3 **Agents and Subcontractors.** Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created, maintained, transmitted, or received by Business Associate on behalf of Allina, agrees to the same restrictions and conditions that apply through this Addendum to Business Associate with respect to such information.

2.4 **Cooperation Related to Requests from Individuals.** Business Associate agrees to provide access, at the request of Allina, and in the time and manner designated by Allina, to Protected Health Information in a Designated Record Set, to Allina or, as directed by Allina, to an Individual in order to meet the requirements under 45 CFR 164.524. Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that Allina directs or agrees to pursuant to 45 CFR 164.526 in the time and manner designated by Allina.

2.5 **General Access by Allina and/or Secretary of Health and Human Services (“Secretary”).** Business Associate agrees to make internal practices, books, and records, including policies, procedures, documentation of safeguards, and Protected Health Information, relating to the use and disclosure of Protected Health Information, received from, or created, maintained, transmitted, or received by Business Associate on behalf of Allina, available to Allina, or at the request of Allina to the Secretary, in a time and manner designated by Allina or the Secretary, for purposes of the Secretary determining Allina’s compliance with HIPAA.

2.6 **Duty to Document Disclosures and Provide Accounting.** Business Associate agrees to document disclosures of Protected Health Information and information related to such disclosures as would be required for Allina to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528.

Business Associate agrees to provide to Allina or an Individual, in the time and manner designated by Allina, information collected in accordance with this Addendum or the Agreement to permit Allina to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528.

### **3. Permitted Uses and Disclosures by Business Associate.**

**3.1 General Use and Disclosure Provisions.** Except as otherwise limited in this Addendum or in the Agreement, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Allina as specified in the Agreement, provided that such use or disclosure would not violate HIPAA, or Allina's minimum necessary policies and procedures, if done by Allina.

**3.2 Specific Use and Disclosure Provisions.** Except as otherwise limited in this Addendum or in the Agreement, Business Associate may:

(a) use Protected Health Information for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate;

(b) disclose Protected Health Information for the proper management and administration of Business Associate, provided that disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

### **4. Obligations of Allina**

4.1 Allina shall make available on its Web site the notice of privacy practices that Allina produces in accordance with 45 CFR 164.520, as well as any changes to such notice.

4.2 Allina shall provide Business Associate with any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, to the extent that such changes may

affect Business Associate's use or disclosure of Protected Health Information.

4.3 Allina shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Allina has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information.

4.4 Allina shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under HIPAA if done by Allina.

### **5. Term and Termination**

**5.1 Term.** The Term of this Addendum shall be effective as of the effective date of the Agreement, and shall terminate when all of the Protected Health Information provided by Allina to Business Associate, or created or received by Business Associate on behalf of Allina, is destroyed or returned to Allina, or, if it is infeasible to return or destroy the Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this Section.

**5.2 Termination for Cause.** Upon Allina's knowledge of a material breach by Business Associate, Allina shall provide an opportunity for Business Associate to cure the breach or end the violation. Allina may terminate this Addendum and the Agreement if Business Associate does not cure the breach or end the violation within the time specified by Allina. Allina may immediately terminate this Addendum and the Agreement if Business Associate has breached a material term of this Addendum and cure is not possible. If neither termination or cure are feasible, Allina will report the violation to the Secretary. This provision shall be in addition to and shall not limit any rights of termination set forth in the Agreement.

### **5.3 Effect of Termination**

(a) Except as provided in 5.3(b), upon termination of this Addendum, for any reason, Business Associate shall return or destroy all Protected Health Information received from Allina, or created or received by Business Associate on behalf of Allina. This provision shall apply to Protected Health

Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.

(b) In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall notify Allina of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of Protected Health Information is infeasible, Business Associate shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

## **6. Security Assessments & Data Security Audits**

**6.1 SAS 70 Type II/ Security Assessments.** Business Associate shall provide Allina, upon its request, with copies of relevant Statement on Auditing Standards (SAS) No. 70, Service Organizations - and sanitized copies of recent security assessments or other mutually agreed upon audit procedures. A "Statement on Auditing Standards (SAS) No. 70" is an internationally recognized auditing standard developed by the American Institute of Certified Public Accountants (AICPA). A SAS 70 audit or service auditor's examination is widely recognized, because it represents that a service organization has been through an in-depth audit of their control activities, which generally include controls over information technology and related processes.

**6.2 Data Security Audits.** To ensure Business Associate's compliance with the Privacy Regulations and Security Regulations at its sole expense, Allina shall have the right to conduct an annual data security audit at Business Associate's site during the term of this Agreement. The data security audit shall be conducted by Allina during Business Associate's regular business hours and upon reasonable advance notice to Business Associate. In addition to the above, Allina shall have the right to conduct a six (6) month follow-up on-site data security audit if problems are identified during any annual audit.

**6.3 Minnesota Statutes.** If Business Associate, pursuant to this Agreement, will store, transmit, or process "personal information" (as defined in Minnesota Statutes Section 325E.61) of Allina's employees or patients, this paragraph will apply. Business Associate agrees to comply with any requirements of Section 325E.61 and, at its sole cost, undertake on behalf of Allina any actions with respect to the personal information, including notice of a breach of the security of the system (as defined in Section 325E.61), required to be taken by an owner of the personal information. If there is a breach of the security of the system, Business Associate will immediately notify Allina and Business Associate will pay, and indemnify Allina against, any and all costs of notice and any other damages incurred by Allina due to the breach of the security of the system. Business Associate further agrees to pay all reasonable costs to enroll any person whose personal information was potentially affected by the breach of the security of the system in a fraud protection program designated by Allina. Business Associate represents and warrants that it has the financial and other resources necessary to satisfy any obligations it has pursuant to this paragraph and Minnesota Statutes Section 325E.61

**6.4 Survival.** The terms of this section 6 shall survive the termination, expiration, non-renewal, or rescission of this Addendum.

**7. Miscellaneous.** The respective rights and obligations of Business Associate under this Addendum shall survive the termination, expiration, or other conclusion of this Addendum, the Agreement or any other agreement between Business Associate and Allina. This Addendum shall inure to the benefit of the parties hereto, but not to the benefit of any other third party. The Parties agree to take such action as is necessary to amend this Addendum from time to time as is necessary for Allina to comply with the requirements of HIPAA. The failure of Allina to insist on the performance of any provision of this Agreement and to exercise any rights hereunder will not be construed as a waiver of future performance of any such provision or the future exercise of such right.

