

Please return this agreement to the attention of Pennie Kohls at:
Allina Hospitals & Clinics
2925 Chicago Ave S
Minneapolis, MN 55407
Fax: 612.262.6152 or
pennie.kohls@allina.com

System Access Agreement for Excellian Web and Remote Access to Excellian

This System Access Agreement for Excellian Web and Excellian Remote Access (this "Agreement") is entered into this ____ day of _____, 20__ ("Effective Date"), between Allina Health System d/b/a Allina Hospitals & Clinics, a Minnesota nonprofit corporation with its principal place of business at 2925 Chicago Ave S Minneapolis, MN 55407 ("Allina"), and _____, a _____ corporation with its principal place of business at _____ ("Practice").

RECITALS

1. Practice employs or retains providers who are members of the medical staff of one or more of Allina's health care facilities (the "Facilities") and who hold clinical privileges to treat inpatients and outpatients of the Facilities.

2. Practice wishes to utilize Allina's Excellian Web internet-based product and Allina's Excellian Remote Access product, or either of them (collectively, the "Products"), to obtain access for its Providers to Facility patient Information maintained by Allina in its Excellian® electronic medical record system (the "System"), and Allina is willing to provide such access to Practice under the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing and the mutual representations and covenants of the parties, the parties hereby agree as follows:

1. **System Access.** Allina will provide Practice with access, through use of the Products in accordance with the terms of this Agreement, to patient Information maintained on the System. Allina, or third parties under contract with Allina, will retain all right, title and interest in and to the Products and the System. Allina hereby grants to Practice a limited, nonexclusive, non-transferable license to use the Products to access, use and disclose the Information in whole or in part as it resides on the System solely to the extent necessary to obtain the access permitted by this Agreement. Practice has no right, title or interest in the Products or the System other than the rights and interests set forth in this Agreement.

2. **Authentication; Fees.**

2.1 **Excellian Web.** In the event Practice informs Allina of a decision to implement RSA tokens for two-factor authentication for Excellian Web, Allina will provide the required tokens for a fee of \$75 per user for every three (3) year period of user access. In addition, Practice will be billed \$75 for each token that is lost or damaged and needs to be replaced. Allina will invoice Practice periodically for tokens supplied under this Agreement. Payment on Allina's invoice will be due within thirty (30) days from the invoice date.

2.2 **Remote Access to Excellian.** Remote Access to Excellian utilizes RSA tokens for two-factor authentication. For Remote Access to Excellian, these tokens are provided at no charge to Practice for Providers who maintain privileges at Allina facilities and who have successfully completed their Excellian training. However, Practice will pay \$75 for each token that is lost or damaged and needs to be replaced. Allina will invoice Practice as needed for replacement tokens supplied under this Agreement. Payment on Allina's invoice will be due within thirty (30) days from the invoice date.

3. **Practice Responsibilities.**

3.1. Medical Staff Membership; Licensure. Practice will assure that each Provider at all times: (i) remains a member in good standing, with clinical privileges, of the medical staff of one or more of the Facilities; and (ii) maintains all applicable licenses and registrations required under the bylaws, rules and regulations for each Facility medical staff of which the Provider is a member.

3.2. Participation in Organized Health Care Arrangement. Practice agrees to participate in the organized health care arrangement established by Allina (the "OHCA"), to be included in communications that publicly represent Practice's participation in the OHCA, to participate in initiatives intended to further the objectives of the OHCA (for example, safety and quality initiatives and peer review activities), and to abide by all policies, procedures, standards and rules established and amended from time to time by Allina for the operation of the OHCA.

3.3 Compliance with User Documentation; Epic Terms and Conditions; Policies and Procedures; Information Quality, Accuracy and Integrity; Medical Judgment. Practice and the Practice Personnel will at all times access and use the System and the Products strictly in accordance with: (i) the User Documentation; (ii) the Terms and Conditions Relating to the Epic Agreement (attached to this Agreement as Schedule A); (iii) all rules, regulations, policies and procedures, as amended from time to time, regarding privacy and security of patient information that may apply to Practice physicians by virtue of such physicians' membership on the medical staff of one or more Allina facilities; and (iv) all other policies, procedures, standards and rules established and amended from time to time by Allina with regard to access to and use of the System and the Products, or any of them, including policies and standards relating to training in the use of the Products and the System, or any of them. The User Documentation, Terms and Conditions Relating to the Epic Agreement, and rules, regulations, policies, procedures, and standards referred to in the preceding sentence are hereby incorporated by reference into this Agreement. Practice accepts sole responsibility for: (a) the accuracy, completeness and integrity of the Information that Practice inputs into the System (in the case of Excellian Remote Access); (b) the programming, procedures and communication lines established and used by Practice for purposes of internet-based or remote access to the System; (c) all medical judgments and advice made and provided by Practice using the Products, the System and the Systems' data processing results; and (d) all other uses of the Products and the System by Practice and the Practice Personnel.

3.4 Security of Information. Practice will maintain the security and confidentiality of the Information and protect it from loss or destruction. Practice will take all appropriate actions to ensure that adequate technical, physical and administrative security measures are in place and utilized so as to prevent the unauthorized use of or access to, or the disclosure, loss or destruction of the Information. In the event Practice discovers, or suspects, unauthorized use of or access to any Information via the System, it will immediately notify Allina.

3.5 System Requirements. Practice will obtain and maintain, at its own expense, the hardware, software and telecommunications network configuration necessary to meet the System Requirements for the Products used by Practice.

4. Indemnity. Practice will defend, indemnify, and hold Allina and its subsidiaries, affiliates, joint venture partners, predecessors and successors in interest, and any entity which has an ownership or controlling interest in Allina or in which Allina has an ownership or controlling interest, including all of the directors, officers, and employees of the foregoing (the "Indemnitees"), harmless from and against any claim, action, proceeding, liability, loss, damage, cost, or expense (including, without limitation, reasonable attorneys' fees) (collectively, "Claims"), arising out of Practice's use or operation of the Products or the System or any of them, any impermissible use or disclosure of the Information by Practice or Practice Personnel, or any breach of this Agreement by Practice or any of the Practice Personnel.

5. License Rights; Warranty Disclaimer; Limitation of Liability. ALLINA HAS NOT MADE, AND PRACTICE HAS NOT RECEIVED, ANY OTHER EXPRESS OR IMPLIED WARRANTIES OR REPRESENTATIONS, INCLUDING, BUT NOT LIMITED TO, ANY EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ALL SUCH WARRANTIES ARE HEREBY EXCLUDED. UNDER NO CIRCUMSTANCES WILL ALLINA BE LIABLE TO PRACTICE FOR ANY DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES OF ANY NATURE OR KIND WHATSOEVER (INCLUDING, WITHOUT LIMITATION, LOST PROFITS OR REVENUES) EVEN IF ALLINA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR KNEW OF OR SHOULD HAVE KNOWN OF THE LIKELIHOOD OF SUCH DAMAGES, AND NOTWITHSTANDING THE FORM (E.G., CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR OTHERWISE) IN WHICH ANY LEGAL OR EQUITABLE ACTION MAY BE BROUGHT AGAINST IT.

6. CONFIDENTIALITY

6.1 Non-Clinical Allina Information. Practice will permit access to proprietary and confidential non-clinical (e.g., business and financial) information of Allina, Epic Systems Corporation ("Epic") or any other vendor under contract with Allina only by Practice employees or third parties under a duty of confidentiality to Practice who need such access as part of their duties on behalf of Practice. Practice will cause its directors, officers, employees, agents and representatives to hold such information in strict confidence. Practice will not, and will cause its directors, officers, employees, agents and representatives to not, at any time during or following the termination of this Agreement, for any reason, directly or indirectly, disclose, publish or use (except as specifically contemplated by this Agreement) any such confidential and proprietary information that has been obtained by or disclosed to them under this Agreement, unless such disclosure, publication or use is not otherwise prohibited by this Agreement and: (a) the information is or becomes, through no act or failure to act of Practice, a part of the public domain; (b) Allina has consented in writing to such use or divulgence of the information; (c) the information is available from third party sources who are authorized to release the information; or (d) such disclosure is required by applicable law, regulations or court order.

6.2 Patient Information and Consent. Each party agrees to comply with all legal, regulatory, professional and ethical requirements applicable to that party's use and disclosure of patient Information maintained in the System. Without limiting the foregoing, Practice agrees that before using the System to obtain access to Patient Information regarding any particular patient, Practice will obtain, not less frequently than annually, the written and signed consent of the patient or the patient's authorized representative authorizing such access; provided, however, that such requirement will not apply in the case of a medical emergency in which Practice is being requested to provide services for a patient and is unable to obtain the patient's consent due to the patient's condition or the nature of the medical emergency. Practice will provide documentation of such consent upon Allina's request.

6.3 Discovery Requests. Within three (3) days of receiving a request for discovery of Information maintained in the System, including, without limitation, document requests, subpoenas, notices of deposition and orders to produce documents, information or individuals, Practice will notify Allina that it has received such a request and will describe in the notice the nature and scope of the request and take such other steps as may be required by Allina policies and procedures, including cooperating with Allina in an effort to obtain a protective order to prevent or limit such disclosure. Practice will provide Allina with at least three (3) business days' written notice before any other disclosure of such Information that is required by law.

7. SYSTEM ACCESS TERMS

7.1 Practice Responsibility for Practice Personnel. Practice will be responsible for all use of the System, and for all access to, use and disclosure of data maintained within the System, by Practice and all Practice Personnel. Use of the System, and access to, use and disclosure of data maintained within the System, by Practice Personnel will for all purposes also be considered use, access, or disclosure (as applicable) of such data by Practice itself. Practice will ensure that use of the System by persons who obtain access under this Agreement complies in all respects with this Agreement and all documents incorporated by reference into this Agreement. Practice will inform all Practice Personnel of the requirements of this Agreement regarding access to the System and use and disclosure of data maintained within the System.

7.2 Access by Practice Personnel. Practice Personnel may access, use and disclose data maintained within the System only for purposes for which Practice would be permitted to access, use and disclose such data under this Agreement. In no event will Practice or any Practice Personnel use the System to access protected health information (as that term is defined in HIPAA) for any purpose other than those purposes for which use of such protected health information by Practice or such Practice Personnel, and disclosure of such protected health information to Practice or Practice Personnel by Allina, is permitted by HIPAA and other applicable laws. Practice will immediately notify Allina of any violation by Practice or Practice Personnel of the requirements of this Agreement relating to System access and will cooperate with Allina to mitigate any harm caused by such violation.

7.3 Business Associates of Practice. With respect to Practice Personnel that obtain access to the System under the Agreement and that are Practice's business associates (as that term is defined in HIPAA) Practice will execute and enforce all required business associate agreements in compliance with HIPAA.

8. Compliance with Laws and Regulations. Each of the parties represents and warrants to the other to the best of its knowledge that it has complied, and each hereby agrees to make all efforts to continue to comply and to cooperate with the other in its effort to comply, in all material respects, with all applicable laws and regulations in connection with the fulfillment of its obligations under this Agreement. Each party represents, warrants and agrees that it has implemented, and will at all times during the term of this Agreement maintain, a compliance plan consistent with (a) the laws and regulations applicable to this Agreement, including without limitation the provisions of HIPAA and other federal and state laws dealing with the privacy and security of health information, and (b) the guidelines for compliance plans issued by the Office of Inspector General of the United States Department of Health and Human Service.

9. Term and Termination. This Agreement will commence as of the Effective Date and will continue in effect unless and until terminated as provided herein. Either party may terminate this Agreement with or without cause at any time immediately upon written notice to the other party. Upon termination of this Agreement, neither party will have any further rights or obligations hereunder except for (a) obligations accruing prior to the date of termination, and (b) obligations, promises or covenants contained herein that are expressly made to extend beyond the termination or expiration of this Agreement.

10. Relationship. Practice agrees that Allina will be Practice's agent for the purposes of performing Allina's obligations under this Agreement. Notwithstanding anything to the contrary in this Agreement, (a) Allina will not be considered to be Practice's agent for other than those purposes unless Practice has agreed to such agency in a separate agreement; (b) nothing in this Agreement will be construed to create a joint venture or partnership between the parties; (c) in no event will any individual be considered a joint employee of Practice and Allina due to the agency relationship described in this section; and (d) individuals engaged by a party to this Agreement will be considered the employee, agent, servant or representative of that party only.

11. Notices. Unless otherwise specified herein, all notices or demands required or permitted to be given or made under this Agreement, will be in writing and will be hand-delivered with signed receipt or mailed by first-class mail, or sent by registered or certified mail, postage prepaid, or sent by overnight courier, addressed to the parties at their respective addresses set forth at the beginning of this Agreement. Addresses may be changed by either party by giving written notice thereof to the other party.

12. Injunctive Relief. The provisions of Sections 6 and 7 are of particular importance for the protection of each party's interests. A breach of Section 6 or Section 7 may cause irreparable harm, and that a claim for monetary damages may not constitute an adequate remedy. Accordingly, in the event of a breach or threatened breach of Section 6 or Section 7, the non-breaching party may apply to any court of competent jurisdiction for injunctive or other relief, and the breaching party will not object to the form of the action or to the form of relief sought in any such action.

13. Miscellaneous. Terms capitalized in this Agreement will have the meaning given to them in Schedule B. This Agreement and all schedules and addenda referenced in it and other documents incorporated into it constitute the entire agreement between Practice and Allina with respect to the subject matter, and supersedes all other prior and contemporary agreements, understandings and commitments between Practice and Allina with respect to the subject matter of this Agreement. This Agreement will not be assigned by Practice without the prior written consent of Allina. This Agreement will not be modified or amended except by a written instrument executed by both parties. All waivers under this Agreement will be in writing in order to be effective. No waiver by a party of any breach of this Agreement or waiver of any other provision will be deemed a waiver of any other breach or provision, and no acceptance of payment or performance by a party after any breach by the other party will be deemed to be a waiver of any breach. No failure or delay by a party to exercise any right it may have by reason of the other party's breach will operate as a waiver of default or as a modification of this Agreement or will prevent the exercise of any right of the non-defaulting party under this Agreement. This Agreement will be governed and interpreted in accordance with the laws of the State of Minnesota. The provisions of Sections 4, 5, 6, 7 and 12 will survive termination of this Agreement.

**ALLINA HEALTH SYSTEM d/b/a
ALLINA HOSPITALS AND CLINICS**

[PRACTICE]

By: _____

By: _____

Its: _____

Its: _____

Dated: _____

Dated: _____

SCHEDULE A: to System Access Agreement for Excellian Web and Remote Access to Excellian

TERMS AND CONDITIONS RELATING TO THE EPIC AGREEMENT

The following provisions are required under the terms of the Epic Agreement:

1. The System is a sophisticated tool that can assist Practice, but it is not a substitute for competent human intervention and discretionary thinking. Therefore, Practice agrees that Practice will, and that it will require its Providers, directors, officers, employees, agents and representatives to, do each of the following:

1.1 Verify the critical outputs of the System, following generally accepted standards of medical practice (The term “critical outputs” means outputs, including without limitation output in the form of data, that Practice knows or should know has potential for negative impact on patient care);

1.2 Not rely solely on the System for data that is known or should be known as having potential for negative impact on patient care (For example, a Practice employee must verify allergies, current medications, relevant histories and problems with the patient to the extent consistent with accepted standards of medical practice);

1.3 Not rely on the System as the sole means of communicating life threatening or critically important results, such as lab, pathology or radiology results, to the extent consistent with accepted standards of medical practice;

1.4 Be vigilant in reporting any Program Errors or suspected Program Errors discovered in the course of using the System, which will include, without limitation, reporting immediately to Allina, and all Practice Personnel who could reasonably be affected by such problem, any problems with the System that have been discovered or reported within Practice and that Practice or any Practice Personnel independently knew or should have known would likely adversely affect patient care;

1.5 Test the System in Practice environment before use, which will include, without limitation, reasonable testing of all critical areas in the System before Practice releases it and refraining from using it until Practice has reasonably confirmed its accuracy; and

1.6 Use the System only in accordance with applicable standards of good clinical practice.

2. Practice understands and agrees that the System contains certain confidential information of Epic and other third parties that is protected by operation of law and Allina’s agreement with them. Consistent with that understanding, and to protect Epic’s and such other third parties’ rights, Practice agrees that it will, and that it will require Practice Personnel, to:

2.1 Maintain in confidence any proprietary and confidential information of Epic and such third parties that is contained in the System,

2.2 Permit access to the System and the Information only by employees who need such access as part of their job responsibilities to Practice and who have been informed of Practice's

obligation to keep Epic confidential information (or generically any vendor's confidential information) confidential and that it is Practice's policy to keep all such information confidential.;

2.3 Notify Allina promptly and fully in writing of any person, corporation or other entity that is known to have copied or obtained possession of or access to any of the System without Allina's authorization.

3. Practice will not, and will not permit Practice Personnel to, do any of the following

3.1 Copy or duplicate by any means the System or any part thereof;

3.2 Reverse engineer any of the System or any part thereof;

3.3 Remove the copyright notice screen from any copy of the System so that the copyright notice is not displayed to each user upon logon; or

3.4 Permit any third party to access or make modifications to the System or the Information, or to receive the Support Services, without the prior written consent of Allina.

4. Practice will, and will require Practice Personnel to, use third party products included in the System only in accordance any provisions in the User Documentation setting forth the permitted or licensed use of such third party products.

SCHEDULE B: to System Access Agreement for Excellian Web and Remote Access to Excellian

The following terms will have the meanings given them below:

1. **System.** “System” will mean, for purposes of this Agreement, the Allina automated medical record system to which access is offered by Allina through the Products.
2. **Information.** “Information” will mean information regarding the Facilities' patients that is maintained in the System and made available for viewing by Practice Personnel via Excellian Web, and for viewing and modifying by Practice Personnel via Excellian Remote Access.
3. **Practice Personnel.** “Practice Personnel” will mean the Providers, management and support staff that Practice employs or otherwise retains to operate Practice, including but not limited to employees, independent contractors, consultants and other service providers engaged to provide services to or for Practice.
4. **Providers.** “Provider” will mean any of the physicians, nurse practitioners, physicians assistants or other practitioners who provide medical services through or on behalf of Practice, including Practice shareholders, employees and independent contractor physicians.
5. **System Requirements for the Products.** “System Requirements for the Products” will mean those hardware, software and telecommunications network configuration standards identified by Allina as the System Requirements for Excellian Web and Excellian Remote Access, or either of them, as such standards are amended by Allina from time to time.
6. **User Documentation.** “User Documentation” will mean the written reference manuals, guidelines, training materials, and procedures relating to Practice’s access to and use of the System and the Products, or any of them, pursuant to this Agreement, which will be developed, amended from time to time and made available by Allina, and all other training materials provided to users in connection with the System and the Products.