

**AGREEMENT FOR ACCESS TO PROTECTED HEALTH INFORMATION
BETWEEN
ESSENTIA HEALTH
AND**

THIS AGREEMENT for Access to Protected Health Information (“PHI”) (“Agreement”) is entered into between ESSENTIA HEALTH (hereinafter “ESSENTIA HEALTH”), a Minnesota nonprofit corporation and _____ (hereinafter “Outside Entity”) a _____, with offices at _____.

WHEREAS, ESSENTIA HEALTH utilizes certain systems which allow users to remotely access patient electronic health records (the “System”) among the ESSENTIA HEALTH hospitals, other health care providers affiliated with ESSENTIA HEALTH, and physicians and physician practices with medical staff privileges at the ESSENTIA HEALTH hospitals or another health care provider affiliated with ESSENTIA HEALTH and other providers of health care items and services in and around Minnesota, North Dakota and Wisconsin;

WHEREAS, the System will allow these parties to view and retrieve the electronic health records (“EHR”) of their patients for the purpose of treatment, payment, and certain health care operations to the extent permitted without authorization by the Administrative Simplification subtitle of the Health Insurance Portability and Accountability Act of 1996, and the rules and regulations promulgated thereunder, as may be amended from time to time (collectively, “HIPAA”), and further subject to the Recovery and Reinvestment Act of 2009 (“ARRA”), including its provisions commonly known as the “HITECH Act,” and rules and regulations promulgated thereunder, as may be amended from time to time;

WHEREAS, ESSENTIA HEALTH believes that the use of EHR technology by Outside Entity would substantially improve the quality of health care provided in its service area and would therefore like to allow access to the System by Outside Entity, subject to the restrictions and other requirements set forth in this Agreement;

WHEREAS, Outside Entity provides professional or other medical services to ESSENTIA HEALTH patients, but does not have a contract with ESSENTIA HEALTH for access to the EHR;

WHEREAS, Outside Entity has agreed to use the System to improve the quality and efficiency of the medical services Outside Entity provides to ESSENTIA HEALTH patients; and

NOW, THEREFORE, in consideration of the premises, 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:

1. System Access.

A. Subject to the terms and conditions of this Agreement, ESSENTIA HEALTH hereby grants Outside Entity non-transferable and non-exclusive access to the System to permit the medical providers (each a “Medical Provider”), as defined and set forth in Exhibit A attached hereto, and their office administrators, secretaries and nurses (collectively “Authorized Users”), to electronically access and use the System solely for storing, processing and displaying medical records and other information, images and content related to the provision of healthcare

to patients of such Medical Providers (the "System License"). Outside Entity understands and warrants that such access and use shall be limited to that achieved through unique access codes provided to each individual authorized user by ESSENTIA HEALTH, and that each authorized user shall be prohibited from using another authorized user's access code to access and/or use the System. Outside Entity further acknowledges and understands that ESSENTIA HEALTH may terminate individual Authorized Users' access and/or the entire System License at any time for any reason without penalty, regardless of any effect such termination may have on Outside Entity's operations.

B. Outside Entity acknowledges and agrees that any hardware, software, network access or other components necessary for Outside Entity to access and use the System must be obtained separately by Outside Entity. ESSENTIA HEALTH shall not be responsible for the procurement, installation or maintenance of any necessary components, and ESSENTIA HEALTH makes no representations or warranties regarding the components whatsoever. Any fees for the components shall be borne by Outside Entity and paid directly to the suppliers of the components.

2. Use or Disclosure of PHI.

A. Outside Entity shall not use or disclose PHI received from ESSENTIA HEALTH in any manner that would constitute a violation of federal or state law, including, but not limited to, HIPAA. Outside Entity shall ensure that its directors, officers, employees, contractors, and agents use or disclose PHI received from, or created or received on behalf of ESSENTIA HEALTH only in accordance with the provisions of this Agreement and federal and state law. Outside Entity shall not disclose PHI in any manner other than as permitted by this Agreement. Outside Entity further agrees that all information accessed through the System will be maintained in the strictest confidentiality and in the same manner as Outside Entity safeguards the confidentiality of other patient care records, or as required by state and federal law.

B. Outside Entity agrees to implement and utilize the System and shall provide ESSENTIA HEALTH with access to a patient's EHR that is created, maintained, transmitted, or received using the System when such patient is also a patient of ESSENTIA HEALTH solely for the purposes of treatment, payment, or health care operations to the extent permitted without patient authorization by HIPAA. Outside Entity shall use the System in accordance with any network security policies issued by ESSENTIA HEALTH from time to time.

C. ESSENTIA HEALTH and Outside Entity shall comply in all material respects with the standards for privacy of individually identifiable health information of the Administrative Simplification subtitle of HIPAA. ESSENTIA HEALTH and Outside Entity recognize their status as "covered entities" under HIPAA and agree to carry out their responsibilities under this Agreement in accordance with such status.

3. Process for Requesting System Access.

A. Outside Entity shall provide ESSENTIA HEALTH with the name and direct contact information for its Privacy Officer, and shall notify ESSENTIA HEALTH of any change in such contact. Outside Entity shall also designate a liaison to coordinate user access (which person can also be the Privacy Officer). The liaison is responsible for managing the modification and termination for accounts that the Outside Entity is provided. Before access to the System, each Authorized User shall select "I ACCEPT" to the terms of the online terms and conditions of use (the "Terms & Conditions") in the form provided herein as Exhibit B, attached hereto and incorporated herein by reference, as that form may be amended from time to time.

Outside Entity agrees to ensure that each Authorized User approved for access under this Agreement adheres to the requirements of this Agreement and the Terms & Conditions. Each Authorized Individual shall also complete, in a form and in a manner to be determined by ESSENTIA HEALTH, training regarding the requirements of HIPAA as they pertain to System access.

B. For purposes of this Agreement, access to the System shall be permitted only for such categories of employees of Outside Entity who have a reasonable need to access PHI of ESSENTIA HEALTH patients for purposes of carrying out their duties to such patients. The Authorized Users of Outside Entity who shall initially have access to the System are listed in Exhibit A of this Agreement, incorporated by reference herein. Outside Entity agrees to notify ESSENTIA HEALTH within 24 hours when any Authorized User is separated from employment of Outside Entity for any reason, including but not limited to termination or voluntary separation. Outside Entity agrees to notify ESSENTIA HEALTH of any new or additional employees of Outside Entity who should be added as an Authorized User. Outside Entity further agrees to validate to ESSENTIA HEALTH the then current Authorized Users requiring access to the System by completing and providing the form attached hereto as Exhibit C, certified to by an officer of Outside Entity, to ESSENTIA HEALTH on the first day of each calendar quarter (January 1, April 1, July, 1 and October 1).

4. Safeguards Against Unauthorized Use or Disclosure of Information.

Outside Entity agrees that it will implement all appropriate safeguards to prevent unauthorized use or disclosure of PHI. Outside Entity agrees to comply with all federal and state laws and regulations regarding privacy, security, and electronic exchange of health information, as currently enacted or amended in the future.

5. Data Ownership.

Outside Entity acknowledges and agrees that ESSENTIA HEALTH owns all rights, interests and title in and to its data and that such rights, interests and title shall remain vested in ESSENTIA HEALTH at all times. Outside Entity shall not compile and/or distribute analyses to third parties utilizing any data received from, or created or received on behalf of ESSENTIA HEALTH without express written permission from ESSENTIA HEALTH.

6. Reporting of Unauthorized Use or Disclosure of PHI.

A. Outside Entity shall, within one (1) working day of becoming aware of an unauthorized use or disclosure of PHI by Outside Entity, its officers, directors, employees, contractors, agents or by a third party to which Outside Entity disclosed PHI, report any such disclosure to ESSENTIA HEALTH. Such notice shall be made to the following:

ESSENTIA HEALTH
c/o Chief Privacy Officer
1702 South University Drive
Fargo, ND 58103

B. Potential Data Security Breach

If at any time Outside Entity has reason to believe that PHI transmitted pursuant to this Agreement may have been accessed or disclosed without proper authorization and contrary to the terms of this Agreement, Outside Entity will immediately give ESSENTIA HEALTH notice

and take actions to eliminate the cause of the breach. To the extent ESSENTIA HEALTH deems warranted, in its sole discretion, ESSENTIA HEALTH will provide notice or require Outside Entity to provide notice to individuals whose PHI may have been improperly accessed or disclosed.

C. ESSENTIA HEALTH has the right, at Outside Entity's sole cost and expense, at any time, to monitor, audit, and review activities and methods in implementing this Agreement in order to assure compliance herewith, within the limits of Outside Entity's technical capabilities.

7. Third Party Access.

Outside Entity shall obtain the written approval of ESSENTIA HEALTH prior to allowing any agent or subcontractor access to PHI that is created or received on behalf of the ESSENTIA HEALTH. In the event that ESSENTIA HEALTH consents to such third party access on a case-by-case basis, Outside Entity shall ensure that the agent or subcontractor agrees to be bound by the same restrictions, terms and conditions that apply to Outside Entity through this Agreement. Outside Entity shall require that any agent or subcontractor notify Outside Entity of any instances in which PHI is used or disclosed in an unauthorized manner. Outside Entity shall take steps to cure the breach of confidentiality and end the violation or shall terminate the agency agreement or subcontract.

8. Availability of Books and Records.

Outside Entity agrees to make its internal practices, books and records relating to the use and disclosure of PHI received from ESSENTIA HEALTH, or created or received on behalf of ESSENTIA HEALTH, available to the Secretary of the U.S. Department of Health and Human Services for purposes of determining ESSENTIA HEALTH's and Outside Entity's compliance with the HIPAA standards. Outside Entity promptly shall provide to ESSENTIA HEALTH a copy of any documentation that Outside Entity provides to the Secretary.

9. Investigations/Sanctions.

ESSENTIA HEALTH reserves the right to monitor, review and investigate reported and identified failures to comply with this Agreement and impose nonmonetary appropriate sanctions. Sanctions may include, but are not limited to, the termination of this Agreement, termination of Outside Entity's access, or termination of individual Authorized User access. ESSENTIA HEALTH reserves the right to report unprofessional conduct to appropriate licensing or other regulatory authorities. Outside Entity agrees to cooperate with ESSENTIA HEALTH in order to adequately investigate complaints received involving the Outside Entity's employees or agents. Outside Entity agrees to have a sanctions policy, produce it upon request, and discipline its employees or agents for all breaches involving ESSENTIA HEALTH PHI in accordance with the HIPAA Privacy Rule. Outside Entity understands that lack of adherence to this section allows ESSENTIA HEALTH to immediately void this Agreement and all associated access privileges.

10. Immediate Termination.

ESSENTIA HEALTH may terminate its participation in this Agreement immediately without liability for such termination, in the event ESSENTIA HEALTH determines that Outside Entity, or Outside Entity's directors, officers, employees, contractors or agents have violated a material provision of this Agreement.

11. Indemnification.

Outside Entity agrees to indemnify, defend and hold harmless ESSENTIA HEALTH, and its subsidiaries, affiliates, and successors in interest, and any entity which has an ownership or controlling interest in Essentia or in which Essentia has an ownership or controlling interest, including all of the directors, officers, agents and employees of the foregoing (the "Indemnitees") 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 Outside Entity's performance under this Agreement or negligent acts or omissions of its officers, directors, subcontractors, agents, or employees, including, but not limited to, any penalties, claims or damages arising from or pertaining to a breach of this Agreement, or the violation of any state or federal law applicable to the use, disclosure or protection of PHI subject to this Agreement. Such indemnification shall include but shall not be limited to the full cost of any required notice to affected individuals, including the costs to retain an outside consulting firm, vendor or outside attorneys to undertake the effort.

12. Insurance

During the term of this Agreement, Outside Entity, at its sole cost and expense shall maintain commercial general liability insurance on an occurrence basis in the minimum amount of \$1,000,000. Such liability insurance coverage shall include "cyber liability" insurance coverage.

13. Entire Agreement.

This Agreement constitutes the entire agreement between the parties regarding access to the System, and supersedes all prior oral or written agreements, commitments, or understandings concerning the matters provided for herein.

14. Amendment.

This Agreement may be modified only by a subsequent written Agreement executed by the parties. The provisions in this Agreement may not be modified by any attachment or letter agreement.

15. Governing Law.

The parties' rights or obligations under this Agreement will be construed in accordance with, and any claim or dispute relating thereto will be governed by, the laws of the State of North Dakota.

16. Waiver.

Neither the waiver by any of the parties hereto of a breach of or a default under any of the provisions of this Agreement, nor the failure of either of the parties, on one or more occasions, to enforce any of the provisions of this Agreement or to exercise any right or privilege hereunder, will thereafter be construed as a waiver of any subsequent breach or default of a similar nature, or as a waiver of any of such provisions, rights or privileges hereunder.

17. Term.

This Agreement is effective beginning and will continue thereafter from year to year unless terminated by either party upon thirty (30) days written notice.

IN WITNESS WHEREOF, ESSENTIA HEALTH and Outside Entity have caused this Agreement to be duly executed on the day and year first above written.

Essentia Health

By: _____

By: _____

Print name: _____

Print name: _____

Title: Chief Information Officer

Title: _____

Date: _____

Date: _____

Exhibit A

1. Medical/clinical personnel including, but not limited to MD, RN, LPN, NA, PA, CMA, NP, PA.
2. Billing and coding related personnel including, but not limited to Coders, Medical Records Clerk, Billing Clerks.

Exhibit B

Essentia Health Terms & Conditions of Use

The protection of health and other confidential information is a right protected by law and enforced by fines, criminal penalties and Essentia Health policy.

Safeguarding confidential information is a fundamental obligation for all persons accessing confidential information.

Your clicking on “I AGREE” at the end of this statement will commit you to that obligation, and WILL be used as proof that you understand and agree to the stated basic duties and facts below regarding privacy.

Read it carefully.

What you agree to in signing this statement:

1. I agree to protect the privacy and security of confidential information I access through ESSENTIA HEALTH’s electronic records at all times.

2. I agree to a) access confidential information to the minimum extent necessary for my assigned duties and b) disclose such information only to persons authorized to receive it.

3. ***I agree that I understand the following:***

a. ESSENTIA HEALTH (“ESSENTIA”) tracks all user IDs used to access electronic records. Those IDs enable discovery of inappropriate access to all electronic records, including patient records.

b. Inappropriate access and/or unauthorized release of confidential or protected information will result in disciplinary action, up to and including termination of employment or other relationship with ESSENTIA, and will result in a report to authorities charged with professional licensing, enforcement of privacy laws and prosecution of criminal acts. Inappropriate access and/or unauthorized release of confidential or protected information will result in temporary or permanent termination of my access to ESSENTIA’s electronic records.

c. I will be assigned a User ID & a one-time use activation code. I agree to immediately select and enter a new password known only to me. I will not disclose my User ID or password to anyone. I understand I may change my password at any time, and will do so based on ESSENTIA policy and/or when prompted. I understand that I am to be the only individual using and in possession of my confidential password. I am aware that the User ID and password are equivalent to my signature. Also, I agree that I am responsible for any use of the system through my User ID and password. This includes data entered, viewed, printed or otherwise manipulated. If I have reason to believe that my password has been compromised I will report this information to ESSENTIA and I will also immediately change my password. Inappropriate use of my ID (**whether by me or anyone else**) is **my** responsibility and exposes me to severe consequences.

4. ***Confidential Health Information includes but is not limited to:***

Any individually identifiable information in possession or derived from a provider of health care regarding a patient's medical history, mental, or physical condition or treatment, as well as the patient's and/or their family member's records, test results, conversations, research records and financial information. (Note: this information is defined in the Privacy Rule as "protected health information.") Examples include, but are not limited to:

- Physical medical and psychiatric records including paper, photo, video, diagnostic and therapeutic reports, laboratory and pathology samples;
- Patient insurance and billing records;
- Centralized and/or department based computerized patient data and alphanumeric radio pager messages;

5. Confidential Employee & Business Information that is not available in the public domain includes but is not limited to:

- Employee home telephone number and address;
- Spouse or other relative names;
- Social Security number or income tax withholding records;
- Information related to evaluation of performance;
- Other such information obtained from ESSENTIA's records, which if disclosed, would constitute an unwarranted invasion of privacy or would cause harm to ESSENTIA.

6. I understand that the Health Insurance Portability and Accountability Act (HIPAA) provides for civil and criminal penalties for violation of patient privacy standards as follows:

- civil penalties of \$100 to \$50,000 per violation up to \$1,500,000 per year for all violations of an identical requirement;
- Criminal penalties of \$50,000 fine and one year in prison;
- If the offense was committed under false pretenses, a \$100,000 fine and five years prison;
- If the offense was committed with intent to sell, transfer or use individually identifiable health information for commercial advantage, personal gain, or malicious harm, a \$250,000 fine and ten years in prison.

EXHIBIT C

Quarterly update to the agreement between Outside Entity and Essentia Health entitled, Agreement for Access to Protected Health Information (the "Agreement")

Outside Entity name :
For calendar quarter:

All capitalized terms used herein and not defined shall have the meaning as set forth in the Agreement.

Current Authorized Users

1. Medical/clinical personnel including, but not limited to MD, RN, LPN, NA, PA, CMA, NP, PA
2. Billing and coding related personnel including, but not limited to Coders, Medical Records Clerk, Billing

Authorized Users separated/termed and date of separation/termination:

Name	Separation/Term Date

The undersigned, being an officer of the Outside Entity named above, hereby certifies to Essentia Health that:

The list of persons identified above in numbers 1 and 2, is a true and correct list, as of the date hereof, of the current Authorized Users, and that they continue to require access to the System and continue to be employees or agents of Outside Entity, and

The list of persons set forth above is a true and correct list of the Authorized Users who have separated and/or terminated employment from Outside Entity during the last calendar quarter, and the date of such separation, and such person(s) no longer require access to the System.

Signature: _____

Name: _____

Title: _____

Date: _____

Contract No. _____