

## ALLINA HEALTH SYSTEM EXTERNAL ACCESS AGREEMENT

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

### AGREEMENT:

#### **ARTICLE 1 ALLINA INFORMATION SYSTEMS**

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**

Section 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.

Section 2.2. Method of Access. EBU will provide Allina IS 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. Methods not adhering to Allina's designated security standards will need approval from Allina IS Data Security ("DS").

Section 2.3. Hardware, Software and Data Connections Required for Access. Allina IS 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.

Section 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 Allina IS 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.

Section 2.5. System Users. EBU will identify to DS 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 request a password change of Allina, if method of access type requires it, due to 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 DS 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. This section does not apply to connections using interface access.

Section 2.6. Responsibilities of EBU and System Users. EBU will ensure:

- (i) each System User complies with the terms of this Agreement; and
- (ii) no System User or system interface:
  - (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.

Section 2.7. 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.

Section 2.8. 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

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

Sectoin 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.

Section 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<sup>1</sup> to Allina under the Allina/EBU Agreement, EBU:

- (a) 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
- (b) 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
- (c) Will comply with all terms and conditions of the Business Associated Addendum attached hereto as Exhibit 6.3.2 and 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.

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<sup>1</sup> Without limiting the breadth and generality of the definition of Services above, the services currently contemplated between the parties include **[Insert brief description of the services]**. External Access Agreement, Revised 2014-12-16

Section 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.

Section 4.4. Password Control. EBU will comply with the applicable provisions of Allina's Information Services policy governing resource password control in regards to logging into Allina IS Systems.

## **ARTICLE 5 MISCELLANEOUS PROVISIONS**

Section 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.

Section 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.

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

Section 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.

**ALLINA HEALTH SYSTEM**  
2925 Chicago Avenue S  
Minneapolis, Minnesota 55407

By \_\_\_\_\_

By \_\_\_\_\_

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

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

PrintTitle  
\_\_\_\_\_

PrintTitle  
\_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

Social Security or  
Federal Tax I.D. Number:

**Exhibit 6.3.2**  
**[Include only if required]**

**BUSINESS ASSOCIATE ADDENDUM**  
**v.3.2013**

**THIS ADDENDUM** is entered into by and between \_\_\_\_\_ (“Business Associate”) and Allina Health System (“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, the Health Information Technology for Economic and Clinical Health Act of 2009 and all implementing regulations, as may be modified or amended from time to time (statutes and regulations separately or together, “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 164, Subpart E are referred to herein as the “Privacy Regulations.” Capitalized terms used, but not otherwise defined, in this Addendum have the same meaning given to such terms in HIPAA. All references to Protected Health Information (“PHI”) in this Addendum specifically include, but are not limited to, all of Allina’s PHI and 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 control. Furthermore, any ambiguity in this Addendum will be resolved in favor of a meaning that permits Allina to comply with HIPAA.

2. **Obligations and Activities of Business Associate.** Business Associate will not use or disclose Allina PHI other than as permitted or required by this Addendum or as Required By Law.

2.1 **Safeguards.** With respect to all Allina PHI Business Associate creates, receives, maintains, uses, discloses, or transmits on behalf of Allina, Business Associate will (a) comply with the Security Regulations with respect to ePHI, (b) implement all reasonable and appropriate administrative, physical, and technical safeguards necessary to protect the confidentiality, integrity and availability of the Allina PHI, and (c) prevent use or disclosure of Allina PHI not provided for by this Agreement.

2.2 **Report of Unauthorized Use or Disclosure, Security Incidents, Breaches; Mitigation.**

(a) Business Associate will promptly report to Allina any use or disclosure of Allina PHI not provided for by this Addendum of which it becomes aware, including any Breach of Unsecured PHI as required by 45 CFR 164.410 and any Security Incident involving Allina PHI. Business Associate will provide any and all information reasonably requested by Allina with regard to any such unauthorized use or disclosure.

(b) With respect to any Breach of Unsecured PHI, Business Associate will provide notification to Allina which will include the following information, at minimum:

- i. The identification of each Individual whose Unsecured PHI has been, or is reasonably believed by Business Associate to have been, accessed, acquired, or disclosed during the Breach.
- ii. Brief description of what happened.
- iii. Date of Breach and date of discovery of Breach, if known.
- iv. Description of the types of Unsecured PHI involved in the Breach.
- v. Description of what Business Associate is doing to investigate the Breach, mitigate harm to Individuals and protect against further Breaches.
- vi. Any other relevant information.

(c) Business Associate will cooperate with Allina following a Breach to provide all required notifications, and take reasonable steps to mitigate any harm, including, but not limited to:

- i. Identify any steps Individuals should take to protect themselves from potential harm resulting from the Breach.
- ii. Investigate the Breach.
- iii. Take prompt and reasonable measures to mitigate, to the extent practicable, the harmful effects of any Breach.
- iv. Establish contact procedures for Individuals to ask questions or learn additional information.
- v. Prepare and provide, at Business Associate's sole expense, notification to Individuals as required by 45 C.F.R. §164.404 and any other such notification as may be required by HIPAA. Notification to Individuals will not be provided without Allina's consent, which consent will not be unreasonably withheld.
- vi. Provide any and all additional information reasonably requested by Allina in order to respond to the Breach.
- vii. Maintain documentation of the Breach as required by HIPAA, including all information required to be reported to the United States Department of Health and Human Services in connection with the Breach.

(d) Notifications required in (a) and (b) will be made as soon as possible following Business Associate's discovery of the event giving rise to the requirement for notification, and in no event later than 10 days following discovery. For the purpose of subsection (c) above, a Breach will be treated as discovered by Business Associate as of the first day on which such Breach is known to Business Associate or, by exercising reasonable due diligence, would have been known to Business Associate. Business Associate will be deemed to have knowledge of a Breach if the Breach is known, or by exercising reasonable diligence would have been known, to any person, other than the person committing the Breach, who is an employee, officer or other agent of Business Associate.

(e) Business Associate will mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use, disclosure, access or acquisition of Allina PHI by or from Business Associate or its agents or subcontractors not authorized by this Agreement.

(f) If, in Allina's discretion and consistent with its established practices, credit monitoring is provided to affected Individuals following a Breach of the Individuals' PHI while held, controlled, stored, transmitted, used or otherwise within the scope of responsibility of Business Associate, the cost of providing such credit monitoring to affected individuals will be paid by Business Associate.

**2.3 Agents and Subcontractors.** Business Associate will ensure that any agent, including a subcontractor of Business Associate that creates, receives, maintains or transmits Allina PHI, for or on behalf of Business Associate, agrees to the same restrictions and conditions that apply through this Addendum to Business Associate with respect to such information and enters into a written contract or other arrangement that complies with the requirements under HIPAA applicable to business associate agreements.

**2.4 Cooperation Related to Requests from Individuals.** Business Associate will provide access, at the request of Allina, and in the time and manner designated by Allina, to Allina PHI 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 will make any amendment(s) to Allina PHI 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 will make internal practices, books, and records, including policies, procedures, documentation of safeguards relating to the use and disclosure of Allina PHI received from, or created, maintained, transmitted, or received by Business Associate on behalf of Allina, available to Allina and the Secretary, in a time and manner designated by Allina or the Secretary, for purposes of the Secretary determining Allina's or Business Associate's compliance with HIPAA.

**2.6 Duty to Document Disclosures and Provide Accounting.** Business Associate will document disclosures of Allina PHI 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 Allina PHI in accordance with 45 CFR 164.528 and, when effective, 42 U.S.C. §17935(c). Business Associate will 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 Allina PHI in accordance with 45 CFR 164.528 and as required by 42 U.S.C. §17935(c).

**2.7 Compliance with Laws.** Notwithstanding any other provisions of this Agreement, Business Associate will carry out its obligations with respect to Allina PHI in compliance with the applicable terms of federal, state and local laws and regulations. Without limiting the foregoing, Business Associate acknowledges that it is subject to the Security Regulations and certain Privacy Regulations as specified by HIPAA and will take all steps necessary to comply with such regulations and other applicable requirements under HIPAA and Minnesota State law as set forth in Section 6.3 below. To the extent Business Associate is to carry out any obligation of Allina under the Privacy Regulations, Business Associate will comply with all requirements under HIPAA that apply to Allina in the performance of such obligation.

**2.8 Record Retention.** Business Associate will retain all HIPAA-related documentation pertaining to Allina PHI for at least six years, as required by the Privacy Regulations and other applicable laws.

**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 Allina PHI 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 Allina PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate.

(b) Disclose Allina PHI for the proper management and administration of Business Associate, provided that such 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.

(c) In using or disclosing Allina PHI, Business Associate will only use or disclose the minimum amount of PHI necessary to accomplish the purpose of such use or disclosure.

4. **Obligations of Allina.**

4.1 Allina will 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 will provide Business Associate with any changes in, or revocation of, permission by an Individual to use or disclose Allina PHI, to the extent that such changes may affect Business Associate's use or disclosure of Allina PHI.

4.3 Allina will notify Business Associate of any restriction to the use or disclosure of Allina PHI 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 Allina PHI.

5. **Term and Termination.**

5.1 **Term.** The Term of this Addendum will be effective as of the effective date of the Agreement, and will terminate when all of the Allina PHI 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 Allina PHI, protections are extended to such information, in accordance with the termination provisions in this Section.

5.2 **Termination for Cause.** Notwithstanding any contrary provisions in the Agreement regarding termination of the Agreement, if Allina determines Business Associate breached any terms of this Addendum, Allina may (a) provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Addendum and the Agreement if Business Associate does not cure the breach or end the violation within the time specified by Allina, or (b) immediately terminate this Addendum and the Agreement if Business Associate has breached a term of this Addendum and cure is not possible. This provision will be in addition to and will 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 will return or destroy all Allina PHI received from Allina, or created or received by Business Associate on behalf of Allina. This provision will apply to Allina PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate will retain no copies of the Allina PHI.

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

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

6.1 **SSAE 16 / Security Assessments.** Business Associate will provide Allina, upon its request, with (1) a Statement on Standards for Attestation Engagements No. 16, Reporting on Controls at a Service Organization (SSAE 16) SOC 1 report if the service Business Associate provides directly impacts financial reporting of Allina, and (2) a SSAE 16 SOC 2 report if the Business Associate is storing, transmitting, receiving or displaying Allina electronic protected health information or personally identifiable information of Allina employees, physicians or patients. Alternatively, upon the agreement of Allina, copies of recently completed external security assessments or results of other mutually agreed upon security and/or privacy audit procedures may be substituted for SSAE 16 reports.

6.2 **Data Security Audits.** To ensure Business Associate's compliance with the Privacy Regulations and Security Regulations at its sole expense, Allina will 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 will 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 will 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 will comply with any requirements of Section 325E.61 and, at its sole cost, undertake on behalf of Allina and with Allina's prior consent, 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. Further, Business Associate will 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.

7. **Indemnification.** Business Associate will indemnify and hold harmless Allina and its affiliates, directors, officers, employees and agents against any and all losses, liabilities, judgments, penalties, awards, costs, fees and expenses (including attorneys' fees) arising out of or related to a breach of this Agreement by Business Associate or Business Associate's agents and subcontractors, including, without limitation, any costs associated with taking steps required under HIPAA in connection with a Breach of Unsecured PHI.

8. **Miscellaneous.** The respective rights and obligations of Business Associate and Allina under this Addendum will survive the termination, expiration, or other conclusion of this Addendum, the Agreement or any other agreement between Business Associate and Allina. This Addendum inures 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. Allina and Business Associate are independent contractors and nothing in this Agreement is intended nor will be construed to create a partnership, agency, employment or joint venture relationship.