
**VALLEY CHILDREN’S CARELINK AGREEMENT FOR
ACCESS TO PROTECTED HEALTH INFORMATION**

(VALLEY CHILDREN’S HOSPITAL - _____)

THIS VALLEY CHILDREN’S CARELINK AGREEMENT FOR ACCESS TO PROTECTED HEALTH INFORMATION (the “*Agreement*”), is entered into to be effective as of _____, 20__ (the “*Effective Date*”), by and between VALLEY CHILDREN’S HOSPITAL, a California nonprofit public benefit corporation (“*Valley Children’s*”), and _____ (the “*Outside Entity*”).

BACKGROUND

- A. Valley Children’s utilizes the Valley Children’s CareLink system that allows healthcare providers to remotely access the electronic health records of their patients (referred to herein as the “*System*”).
- B. The System will allow the Outside Entity to view and retrieve the electronic health records (“*EHR*”) of its patients for the purposes of treatment, payment, and certain health care operations to the extent permitted without authorization by the Health Insurance Portability and Accountability Act of 1996 the rules and regulations promulgated thereunder, as may be amended from time to time (collectively, “*HIPAA*”).
- C. Valley Children’s believes that the use of EHR technology by Outside Entity will substantially improve the quality of health care provided in and around Valley Children’s 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.
- D. Outside Entity agrees to use the System to improve the quality and efficiency of the medical services provided by Outside Entity to patients, including but not limited to, patients of Valley Children’s.

NOW THEREFORE, for and in consideration of the mutual promises and covenants set forth herein, and for other good and valuable consideration, the parties agree as follows:

AGREEMENT

- 1. **System Access.** Subject to the terms and conditions of this Agreement, Valley Children’s hereby grants Outside Entity a non-transferable and non-exclusive license to access the System to permit the medical providers and their office administrators, billing/coding staff and nurses/clinical staff (collectively referred to herein as the “*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*”). Prior to granting access to the System, Outside Entity, shall submit certain information on each Authorized User, including the Authorized User’s name and job title. Outside Entity shall submit the required information for each Authorized User to Valley Children’s through the System.

Outside Entity agrees and acknowledges that such access and use shall be limited to that achieved through unique access codes provided to each individual Authorized User by Valley Children’s, and that each of the Authorized Users 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 Valley Children's 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.

Outside Entity agrees and acknowledges 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. Valley Children's shall not be responsible for the procurement, installation or maintenance of any necessary components, and Valley Children's 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. **Access, Use, or Disclosure of Protected Health Information.**

2.1 Outside Entity shall not access, use, or disclose protected health information (referred to herein as "**PHI**"), received from Valley Children's in any manner that would constitute a violation of federal or state law, including, but not limited to, HIPAA and the California Confidentiality of Medical Information Act ("**CMIA**" and, together with HIPAA, collectively referred to herein as the "**Privacy Laws**"). Outside Entity agrees to implement and utilize the System in accordance with any network privacy and security policies issued by Valley Children's from time to time.

2.2 Outside Entity shall, within one (1) business day of becoming aware of an unauthorized access, 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 access, use or disclosure to Valley Children's. Such notice shall be made to the following:

Valley Children's Hospital
9300 Valley Children's Place
Madera, California 93636
Attention: Privacy Officer

2.3 If at any time Outside Entity has reason to believe that PHI transmitted pursuant to this Agreement may have been accessed, used, or disclosed without proper authorization and contrary to the terms of this Agreement, Outside Entity will immediately give Valley Children's notice and take actions to eliminate the cause of the breach. To the extent Valley Children's deems warranted, in its sole discretion, Valley Children's will provide notice (at Outside Entity's expense) or require Outside Entity (at its own expense) to provide notice to individuals whose PHI may have been improperly accessed, used, or disclosed. If Outside Entity is required to provide notice to those individuals whose PHI may have been improperly, accessed, used or disclosed, Outside Entity agrees to abide by the statutory and regulatory requirements for such notice, as further defined in the Privacy Laws. In the event credit monitoring is necessary for affected individuals, it shall be provided at Outside Entity's sole cost and expense.

2.4 Outside Entity shall obtain the written approval of Valley Children's prior to allowing any agent or subcontractor access to PHI that is created or received on behalf of Valley Children's. In the event that Valley Children's 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.

- 2.5 Should this Agreement terminate for any reason, Outside Entity shall extend the protections of this Agreement and the required safeguards of the applicable Privacy Laws to any PHI accessed and/or maintained as part of this Agreement for so long as Outside Entity maintains such PHI.

3. **Process for Requesting System Access.**

- 3.1 Outside Entity shall also designate an administrator to coordinate and monitor user access. Outside Entity shall appoint its initial administrator by submitting the administrator's, name, job title, email address and telephone number, in the form provided herein as **Schedule 1**, to Valley Children's. In the event that Outside Entity appoints a different administrator, Outside Entity shall submit the information in **Schedule 1**, within twenty four (24) hours of appointing the new site administrator. Outside Entity shall also ensure that any prior site administrator's account access is terminated. The administrator is responsible for managing the individual Authorized User applications, submission of the information on each Authorized User, modification of Authorized User access and termination of Authorized User access 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 of use and confidentiality statement (the "***Confidentiality Statement***") in the form provided herein as **Schedule 2**, attached hereto and incorporated herein by reference, as that form may be amended from time to time by Valley Children's in its sole and absolute discretion. Each Authorized User will be required to accept the Confidentiality Statement on an annual basis and upon any substantive revisions made by Valley Children's to the Confidentiality Statement. Failure to review and accept the Confidentiality Statement will result in denial, or termination, of access. Outside Entity agrees to ensure that each Authorized User approved for access under this Agreement adheres to the requirements of this Agreement and the Confidentiality Statement. Each Authorized Individual shall also complete, in a form and in a manner acceptable to Valley Children's, training regarding the requirements of the Privacy Laws as they pertain to System access.

- 3.2 For purposes of this Agreement, access to the System shall be permitted only for such categories of employees of Outside Entity who have a business and/or clinical need to access PHI of Valley Children's patients for purposes of carrying out their duties to such patients. Outside Entity agrees to notify Valley Children's within twenty-four (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. The administrator at the site will terminate access immediately. Outside Entity further agrees, on a quarterly basis, to validate that the Authorized Users continue to require access to the System and continue to be employees or agents of Outside Entity.

4. **Data Ownership.** Outside Entity acknowledges and agrees that Valley Children's owns all rights, interests and title in and to its data and that such rights, interests and title shall remain vested in Valley Children's 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 Valley Children's

without express written permission from Valley Children's.

5. **Term of Contract and Termination.**

5.1 **Term of Contract.** This Agreement shall become effective as of the Effective Date and shall continue thereafter for a period of one (1) year, unless earlier terminated as hereinafter provided (the "***Initial Term***"). This Agreement shall automatically renew for additional periods of one (1) year each (each, a "***Renewal Term***" and, together with the Initial Term, collectively referred to herein as the "***Term***"), unless either party provides notice of intent not to renew this Agreement not less than thirty (30) days prior to the expiration of the Initial Term or the then current Renewal Term.

5.2 **Termination.** Valley Children's may terminate this Agreement immediately and without liability for such termination, with or without cause.

6. **Insurance.** Outside Entity shall procure and maintain, during the term of this Agreement or any renewal hereof, sufficient insurance coverage or program of self-insurance to cover the Outside Entity in at least the following amounts:

6.1 Professional Liability: one million dollars (\$1,000,000) per occurrence and annual aggregate;

6.2 Workers' Compensation insurance in amounts as required by the laws and regulations of the State of California;

6.3 General Liability Insurance: one million dollars (\$1,000,000) per occurrence and annual aggregate; and

6.4 Cyber Liability Insurance: one million dollars (\$1,000,000) per occurrence and annual aggregate.

Outside Entity shall secure certificates of insurance for the above mentioned coverage and provide evidence of said certificates to Valley Children's at the time of execution of this Agreement and annually thereafter. Outside Entity shall also secure endorsements naming Valley Children's as an additional insured at the time of execution of this Agreement and annually thereafter.

7. **Indemnification.** Outside Entity agrees to indemnify and hold harmless Valley Children's, its governing board, officers, employees and agents, from and against any and all claims, costs, losses, damages, liabilities, expenses, demands, and judgments, including litigation expenses and attorneys' fees, which may arise from Outside Entity's performance under this Agreement or negligent or willful acts or omissions of its 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 impacted individuals, including the costs to retain an outside consulting firm, vendor or outside attorneys to undertake the effort and the cost of providing credit monitoring services to impacted individuals if necessary in Valley Children's sole reasonable

discretion.

8. **General Provisions.**

- 8.1 **Exclusions/Suspensions.** Outside Entity confirms that it has not been excluded, debarred or suspended from participation in any governmental program, including but not limited to Medicare, Medicaid, or Medi-Cal payor programs, and is not the subject of any investigation regarding participation in such programs, and has not been convicted of any crime relating to any governmental program. Outside Entity agrees to notify Valley Children's immediately if Outside Entity becomes aware of any adverse action related to Outside Entity's eligibility to participate in a governmental program. This Agreement shall immediately terminate if Outside Entity becomes ineligible.
- 8.2 **Use of Name.** Outside Entity shall not make any written use of or reference to Valley Children's name for any marketing, public relations, advertising, display or other business purpose or make any use of Valley Children's facilities for any activity unrelated to the express business purposes and interests of Valley Children's without the prior written consent of Valley Children's.
- 8.3 **Medicare Access to Records.** If the cost of the services provided under this Agreement equals Ten Thousand Dollars (\$10,000) or more over a twelve (12) month period, both parties, until the expiration of four (4) years after the furnishing of such services pursuant to this Agreement, shall make available upon the written request of the Secretary of Health and Human Services or the U.S. Comptroller General or any of their duly authorized representative, this Agreement and any books, documents, and records that are necessary to certify the nature and extent of the costs incurred.
- 8.4 **No Assignment.** Outside Entity acknowledges that this Agreement calls for personal services of a unique and personal nature, and as such, Outside Entity shall not delegate the performance of any such services to any other firm or corporation without the prior written consent of Valley Children's, which consent Valley Children's may grant or withhold in its discretion.
- 8.5 **No Third Party Beneficiaries.** This Agreement is made solely for the benefit of the parties to it. No other person will have any rights, interest or claims under its terms or be entitled to any benefits under or on account of the Agreement as a third party beneficiary or otherwise.
- 8.6 **Severability.** The provisions of this Agreement are severable, and in the event that any provision is declared invalid, this Agreement shall be interpreted as if such invalid provision were not contained herein.
- 8.7 **Dispute Resolution.** The parties shall submit all disputes, claims or demands of any kind relating to or arising out of this Agreement ("***Controversy***") to a three-step dispute resolution process. The three-step process shall (i) begin with informal negotiations conducted in good faith; (ii) be followed, if necessary, by mediation, initiated by written demand of one party served on the other, and if the mediator determines that the

Controversy cannot be resolved by mediation or if either party shall make written demand therefor, then; (iii) the parties agree to waive their rights, if any, to a jury trial, and to submit the controversy or dispute to a retired judge or justice pursuant to Section 638 et seq. of the California Code of Civil Procedure, or any successor provision, for resolution in accordance with Chapter 6 (References and Trials by Referees), of Title 8 of Part 2 of the California Code of Civil Procedure, or any successor chapter. The parties agree that the only proper venue for the submission of claims is the County of Madera, California, and that the hearing before the referee shall be concluded within nine (9) months of the filing and service of the complaint. The parties reserve the right to contest the referee's decision and to appeal from any award or order of any court. Each party shall pay its own attorneys' fees and costs; provided that, the losing party shall pay to the prevailing party a reasonable sum for attorneys' fees and costs actually incurred in bringing or defending the legal action.

8.8 **Applicable Law and Venue.** This Agreement shall constitute a contract under the laws of the State of California. Any action or proceeding brought hereunder shall be brought in the state court sitting in Madera County, California, or federal court sitting in the Eastern District of California, Fresno County, California.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date set forth above.

“Valley Children’s”

“Outside Entity”

VALLEY CHILDREN’S HOSPITAL,
a California nonprofit public benefit
corporation

By: _____

By: _____

Its: _____

Its: _____

Schedule 1

Administrator

Name: _____

Job Title or Position: _____

Email Address: _____

Telephone Number: _____

Schedule 2

Confidentiality Statement

Terms of Use and Confidentiality Statement

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

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

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

Read it carefully.

Any account not used within 90 days will be disabled. After 180 days of inactivity the account will be terminated.

What you agree to in signing this statement:

1. I agree to protect the privacy and security of confidential information I access through Valley Children’s Hospital’s (hereafter “**Valley Children’s**”) electronic records at all times.
2. I agree to: (a) access confidential information to the minimum extent necessary for my assigned duties; (b) use and disclose such information only to persons authorized to receive it for the purpose of treatment, payments and operations; (c) to refer any request for records outside of treatment, payment or healthcare operations to:

Valley Children’s Hospital
9300 Valley Children’s Place
Madera, California 93636
Attention: Health Information Management Department

3. I understand and agree to the following:
 - (a) Valley Children’s tracks all user IDs used to access electronic records. Those IDs enable discovery of inappropriate access to patient records.
 - (b) Inappropriate access and/or unauthorized release of confidential or protected health information will result in disciplinary action, up to and including termination of employment, and will result in a report to authorities charged with professional licensing, enforcement of privacy laws and prosecution of criminal acts. I further understand and agree that inappropriate access and/or unauthorized release of confidential or protected information may result in temporary and/or permanent termination of my access to Valley Children’s electronic records.

- (c) That I will be assigned a User ID and a one-time use activation code. I agree to immediately select and enter a new password known only to me. I understand I may change my password at any time, and will do so based on Valley Children's established 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 am aware that I am responsible for any use of the system utilizing 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 Connecticut Children's and I will also immediately change my password. I understand that User IDs cannot be shared. 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 patients and/or their family members records, test results, conversations, research records and financial information. (Note: this information is defined in HIPAA as "protected health information"). Examples include, but are not limited to:

- (a) Physical, medical, and psychiatric records including paper, photo, video, diagnostic and therapeutic reports, laboratory and pathology samples;
- (b) Patient insurance and billing records;
- (c) 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:***

- (a) Employee home telephone number and address;
- (b) Spouse or other relative names;
- (c) Social Security number or income tax withholding records;
- (d) Information related to evaluation of performance;
- (e) Other such information obtained from Valley Children's records, which if disclosed, would constitute an unwarranted invasion of privacy; or disclosure of protected or confidential information that would cause harm to Valley Children's.