

## AVERA SYSTEM LINK AGREEMENT

THIS AGREEMENT is made as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_ (“Avera System Link Partner”) and Avera Health and Avera Health Plans, Inc. (collectively “Avera”) for the purpose of granting Avera System Link Partner secure access to select Avera patient medical records through Avera’s System EPICARE Link software (“Service”) as described herein and incorporated into this Agreement.

WHEREAS, Avera has electronic patient medical records consisting of clinical information, patient demographics, insurance carrier information, and other information regarding Avera patients (“Avera Data”); and

WHEREAS, Avera has an interest in improving health care operations and the delivery and coordination of care to Avera patients by providing caregivers of Avera patients or other approved users secure electronic access to select portions of Avera patient medical records defined as Avera Data herein; and

WHEREAS, Avera can provide caregivers and other approved users with secure electronic access to the Avera Data, and Avera System Link Partner, through its Users, desires to obtain access to Avera Data through the Service concerning those Avera patients Avera System Link Partner has a relationship with.

NOW, THEREFORE, in consideration of the promises and covenants contained in this Agreement, and for good and valuable consideration, Avera and Avera System Link Partner agree as follows:

1. Access to Avera Data. Upon execution of this Agreement and any other required documents and approval of all access sites and Users, Avera will provide Avera System Link Partner access to the Avera Data and provide limited training on the Avera System Link software.

2. Definitions.

2.1 “Avera System Link Partner” means a physician practice or healthcare facility, or other legal entity with a direct treatment, or health care payment relationship with Avera patients. “Avera System Link Partner” may also mean any other legal entity as approved by Avera with a legitimate need for access to Avera Data consistent with state and federal privacy laws and regulations, including but not limited to the Health Insurance Portability and Accountability Act, 45 C.F.R. Part 160 and Part 164, Subparts A and E, as amended (“HIPAA”). The legal entity is considered the Avera System Link Partner and an authorized representative must sign the Avera System Link Partner Agreement on behalf of the entity.

2.2 “Avera Data” means any individually identifiable health information regarding Avera patients accessed through the Service, including, without limitation, clinical information such as progress notes, specialty consults, laboratory and imaging results, patient

demographic and insurance information. This information is protected by various state and federal privacy laws and regulations including, but not limited to, HIPAA.

2.3 “Service” means the Avera System Link software that provides a secure method of communication enabling Users to view Avera Data.

2.4 “Technical Liaison” means the department or individual employed by Avera who should be contacted by a User or Avera System Link Partner to report certain events or problems as required by this Agreement. The contact information for the Technical Liaison is contained in Section 13 below.

2.5 “User” means an individual employee of Avera System Link Partner who is authorized by Avera System Link Partner pursuant to Section 7(b) to access Avera Data utilizing the Service.

3. Term and Termination. This Agreement is effective on the date first listed above and will continue until either party notifies the other in writing of its intent to terminate. Either party may terminate this Agreement by sending written notice of the intent to terminate. Avera retains the right to unilaterally terminate access, in its sole discretion, without advance notice to the Avera System Link Partner. Avera will consider any unauthorized use of Avera Data as a breach of this Agreement and grounds for immediate termination of this Agreement. Upon termination of this Agreement, Avera System Link Partner agrees to ensure that its Users discontinue using the Service or accessing Avera Data immediately.

4. Permitted Use of the Avera Data. Avera System Link Partner may access, use, and disclose Avera Data originating in the Service only

- (a) As required for purposes related to treatment, including billing in connection with treatment, of Avera patients which Avera System Link Partner has a direct relationship with and as consistent with HIPAA and any other applicable laws and regulations; or
- (b) To receive select portions of Avera Data as produced by Avera’s Health Information Management Release of Information Department; or
- (c) For other specific purposes as approved by Avera and consistent with HIPAA and any other applicable laws and regulations.

Avera System Link Partner understands that Avera Data is protected from unlawful disclosure by HIPAA and other state or federal laws and regulations. Avera System Link Partner agrees that it (including its employees, officers and agents) will comply with all applicable laws and regulations, and the terms of this Agreement, in its access and use of Avera Data.

5. Prohibited Use of the Avera Data. Avera System Link Partner agrees it will not access or use Avera Data for any purpose other than those set forth in Paragraph 4 above and that if Avera determines that Avera System Link Partner has accessed or used Avera Data in a prohibited or unlawful manner, Avera may unilaterally terminate all access and seek any such other relief as appropriate. Specifically, Avera System Link Partner may not:

- (a) Otherwise sell, disclose to any third party, transfer to any third party, or permit or facilitate third-party access to the Avera Data;
- (b) Transmit in any way Avera Data obtained through the Service for any purpose other than those listed in Paragraph 4; or
- (c) Use Avera Data with the intent to negatively impact the competitive advantage of Avera in the marketplace.

6. Confidentiality of Avera Data. Avera System Link Partner understands that Avera Data includes confidential patient information, including protected health information (“PHI”) as defined by HIPAA. Avera System Link Partner agrees to comply with HIPAA in its use of Avera Data and take all reasonable and necessary measures and precautions as required by HIPAA to ensure the privacy and security of the Avera Data it accesses. Specifically, Avera System Link Partner agrees to:

- (a) Immediately report to the Technical Liaison any unauthorized use or disclosure of any portion of Avera Data of which Avera System Link Partner becomes aware.
- (b) Upon receipt of a request for disclosure of Avera Data from a court or governmental agency, immediately notify the Technical Liaison prior to any disclosure to allow Avera the opportunity to seek an appropriate protective order or other limitation necessary to protect the Avera Data.
- (c) Cooperate with Avera as requested to investigate and review access by any User and help establish whether such access is consistent with this Agreement.
- (d) Train all Users in Avera System Link Partner’s policies and procedures regarding HIPAA or any other applicable state or federal privacy laws and regulations.

7. Obligations of Avera System Link Partner.

- (a) Equipment and Supplies. Avera System Link Partner is solely responsible for the costs of equipment, maintenance and supplies required for access to and use of Avera Data through the Service. Such costs include, but are not limited to, cost of acquisition, installation, operation and maintenance of personal computers and printers, costs related to wiring, hardware, software, phone charges, and internet access services, and costs of ongoing equipment and supply upgrades.
- (b) Identification of Users. Avera System Link Partner agrees that it will identify and maintain a list of authorized Users and ensure that only authorized Users access Avera Data pursuant to this Agreement.
- (c) Termination of Access. Avera System Link Partner will discontinue a User’s access to the Service in the event Avera System Link Partner determines that a User improperly accessed or used the Avera Data or

shared passwords in violation of this Agreement or the User Agreement and notify the Technical Liaison of the same.

- (d) Addition/Removal of Users. If additional Users are needed, or if a User needs to be removed for any reason or ceases to remain employed by the Avera System Link Partner, Avera System Link Partner will use functionality within the Service to immediately update the list of approved Users or contact the Technical Liaison for assistance in adding or removing Users.
- (e) Ensure Appropriate Use of Service. Avera System Link Partner agrees to ensure that Users access Avera Data in accordance with the terms of this Agreement and the User Agreement.
- (f) Representations and Warranties. The Avera System Link Partner represents that it is in compliance with all applicable state and federal laws and regulations governing the provision of health care or related services to patients, and that neither it nor any of its Users, employees, agents or officers has been debarred, penalized by, convicted, sanctioned, suspended, excluded or otherwise deemed ineligible to participate in any state or federal reimbursement program, including Medicaid or Medicare. In the event that the Avera System Link Partner or any of its Users, employees, agents or officers are sanctioned or excluded from participation in any state or federal reimbursement program as described above, Avera System Link Partner will immediately notify the Technical Liaison and Avera may, in its sole discretion, terminate this Agreement and provide written notice to Avera System Link Partner.

8. Assignment. Neither this Agreement nor any of the rights herein may be assigned by Avera System Link Partner without the express, prior written approval of Avera. Avera may, without the consent of Avera System Link Partner, assign the rights and obligations herein to any entity affiliated with Avera.

9. Relationship of the Parties. It is expressly understood and agreed that this Agreement is not intended to, and does not create a joint venture, partnership, association or other affiliation or business relationship between the parties. Avera and Avera System Link Partner shall at all times be separate legal entities and are not liable for the debts or obligations of the other party.

10. Insurance and Indemnification. Each party agrees to obtain or fund at their own cost appropriate professional liability and general insurance coverage with limits of no less than \$1,000,000 per occurrence and \$3,000,000 annual aggregate to insure itself and its employees against liability for claims brought by third parties in connection with its provision of health care or related services, or performance of any activities, duties and responsibilities under this Agreement. Avera System Link Partner agrees to indemnify, protect, save and hold harmless Avera and its affiliates, officers, employees and agents, from and against any and all losses,

damages, injuries, claims, demands and expenses (including attorneys' fees and legal expenses) of whatsoever kind and nature, arising on account of or related to any act, failure to act, willful misconduct or breach of this Agreement by the Avera System Link Partner or one of its Users or officers, employees or agents. This provision shall survive termination of this Agreement.

11. Applicable Law and Disputes. This Agreement shall be construed, and the rights and liabilities of the parties determined, in accordance with the laws of the State of South Dakota, except with regard to the conflicts of law principles of the State of South Dakota to the extent they would apply the laws of another state to this Agreement. Venue shall lie in Minnehaha County, South Dakota for any dispute arising out of this Agreement. If any dispute arises under this Agreement and results in litigation, the losing party shall pay the prevailing party's costs of litigation, including reasonable attorneys' fees.

12. Survival of Certain Provisions. The obligations of the parties to this Agreement pertaining to insurance and indemnification, confidentiality and HIPAA compliance, and permitted and prohibited uses of Avera Data shall survive and continue beyond the termination of this Agreement.

13. Notices. Any notices required to be given under this Agreement to the Technical Liaison may be given verbally by contacting Avera Privacy at [Avera.Hipaa@avera.org](mailto:Avera.Hipaa@avera.org) or 605-322-7801. All other notices required under this Agreement shall be in writing and may be delivered personally or shall be deemed to be delivered when deposited in the United States mail, postage prepaid, certified or registered mail, return receipt requested, addressed to the parties at the addresses indicated below, or at any address the parties may specify in writing later:

If to Avera: Avera Health  
ATTN: Chief Legal Officer & General Counsel  
3900 West Avera Drive  
Sioux Falls, SD 57108

If to Avera System Link Partner:

Attn: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

14. Entire Agreement and Waiver. This Agreement constitutes the entire agreement between the parties and supersedes all other written or oral agreements with respect to the same subject matter hereof. This Agreement may not be altered, amended, or modified except as agreed in writing by the parties. No consent or waiver, express or implied, by either party in the performance by the other party of its obligations under this Agreement shall be deemed or construed to be a consent to or waiver of any other breach or default by the other party.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first written above.

**AVERA HEALTH**

By: \_\_\_\_\_

Its: \_\_\_\_\_

**[AVERA SYSTEM LINK PARTNER]**

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

TIN: \_\_\_\_\_

Date: \_\_\_\_\_