

**SVHC ELECTRONIC MEDICAL RECORDS ACCESS AND
CONFIDENTIALITY AGREEMENT (for NON-EMPLOYEE ACCESS)**

THIS ELECTRONIC MEDICAL RECORDS ACCESS AND CONFIDENTIALITY AGREEMENT ("Agreement") is made and entered into effective _____, 20____, between Southwestern Vermont Health Care Corp., a Vermont nonprofit corporation ("SVHC") and [Organization name], a _____ nonprofit corporation.

RECITALS

- A. SVHC creates and maintains health information relating to its patients in an electronic medical record (defined as "Confidential Information" or "EMR"). This Confidential Information is located in the computer information system maintained by SVHC ("SVHC Information Systems"). The Confidential Information or EMR includes all patient-related information in whatever system or format that it is maintained by SVHC. The Confidential Information is protected from unauthorized or inappropriate access by SVHC policy, as well as state and federal law.
- B. User regularly provides health care services to patients shared with SVHC. User believes that these services can be provided more safely, effectively, and timely if certain User Personnel (as defined below) have appropriate access to relevant Confidential Information maintained by SVHC.
- C. User has requested access to the EMR for shared patients in order to provide the best possible service to these patients. SVHC wishes to grant to User appropriate access to SVHC Confidential Information contained in SVHC Information Systems as needed to provide health care for those shared patients.

The parties agree as follows:

AGREEMENT

1. **Access to Confidential Information through SVHC Information Systems**. SVHC agrees to provide User Personnel with access to SVHC Confidential Information through the SVHC Information Systems, subject to the conditions outlined in this Agreement. This access to the EMR is provided to allow User Personnel to obtain Confidential Information to the extent necessary to provide health care treatment to shared patients. User acknowledges and agrees that SVHC incurs costs by providing such access and User agrees to make a one-time payment to SVHC in the amount of \$_____ to offset such costs.

"User Personnel" is defined as physicians, nurse practitioners and physician assistants, and necessary support staff that are employed by the User, assigned and providing services in the User's facility. Any User Personnel before being granted access to the EMR must be a credentialed employee of the User, not a locum tenens or other temporary personnel, or member of the User medical staff who is not also employed by the User.

"SVHC Information Systems" is defined to include all the SVHC patient electronic medical record in whatever format.

SVHC represents and warrants that it shall provide User with access to SVHC Information Systems in a manner that is consistent with all licenses and/or other property rights that SVHC holds and that User's access to SVHC Information Systems is in accordance with this Agreement shall not breach any of such agreements. SVHC agrees to indemnify, defend and hold harmless, User and its affiliates, and their respective members, trustees, officers, directors, employees and agents, from and against any claim, cause of action, liability, damage, cost or expense, including without limitation, reasonable attorneys' fees and costs, arising out of or in connection with any breach by SVHC in allowing User access in accordance with the terms of this Agreement.

2. **Scope of Use.** User for itself and on behalf of the User Personnel, agrees not to gain access to, use, copy, make notes of, remove, divulge or disclose Confidential Information, except as necessary to provide health care treatment to shared patients. User agrees to control the access and use of SVHC Confidential Information or SVHC Information Systems by User Personnel in a manner that strictly complies with this Agreement.

User agrees that each of the User Personnel that will have access to the SVHC Confidential Information will have received and read the SVHC Confidentiality of Information policy and agree to be bound by the terms and conditions of the SVHC Confidentiality of Information policy. User agrees that should any User employee violate any provision of the SVHC Confidentiality of Information policy or this Agreement, SVHC will discontinue User access to SVHC Information Systems. Additionally, SVHC may take legal action against the User, including seeking monetary damages for inappropriate use and/or disclosure of SVHC Confidential Information.

User agrees that it will use SVHC Information Systems only to access the EMR for shared patients and strictly in compliance with the terms of this Agreement. User promises that it will not use the SVHC Information Systems for any other purpose including personal use, solicitation for outside business ventures, campaigns, and political or religious causes.

User will access only the Confidential Information which User "needs to know" as that data is designated by HIPAA minimum necessary policies and the SVHC Security Policy.

3. **Protection of Confidentiality and Security of Confidential Information.** User for itself and on behalf of the User Personnel agrees to protect the confidentiality and security of the Confidential Information obtained from SVHC. User for itself and on behalf of the User Personnel agrees to comply with applicable Federal and State laws and with all existing and future SVHC policies and procedures concerning the confidentiality, privacy, security, use and disclosure of Confidential Information, which are available upon request. In the event that User objects to any such policies, User shall be entitled to terminate this Agreement by delivery of a written notice of termination to SVHC, which termination shall be effective upon five (5) days prior notice. **User for itself and on behalf of the User Personnel agrees to strictly comply with the SVHC security policies and procedures, as they may be amended from time to time.** SVHC will provide to User the policies and procedures at the inception of this Agreement and as they may be amended from time to time

4. **Patient Permission Before Access.** Unless necessary for treatment, User for itself and on behalf of the User Personnel agrees not to examine patient communicable disease information, genetic testing information, drug and alcohol abuse treatment information, and mental health information without having secured patient permission required by SVHC policies or applicable laws or regulations.

Any information obtained from the EMR to which User Personnel have access is confidential and must not be disclosed to others unless the patient or his/her authorized representative explicitly consents to such disclosure and the consent is duly documented.

In the event that information released is protected by Federal Confidentiality of Alcohol and Drug Abuse Patient Records regulations, the parties agrees that any such information has been disclosed from records protected by Federal confidentiality rules (42 CFR Part 2) (the "Federal Rules"). The Federal Rules prohibit making any further disclosure of this information unless further disclosure is expressly permitted by 42 CFR Part 2. A general authorization for the release of medical or other information is NOT sufficient for this purpose. The Federal Rules restrict any use of the information to criminally investigate or prosecute any alcohol or drug abuse patient. The User and User Personnel shall comply with such restrictions.

5. **Codes and Passwords.** User will identify those employees who shall have access to SVHC's Confidential Information pursuant to this Agreement as User Personnel. The User employees who shall be permitted to have access to SVHC's Confidential Information as of the date of this Agreement are listed on "Exhibit B" which is attached. Any User Personnel who is no longer employed by the User shall have no further access to the SVHC Confidential Information. User will promptly inform the Security Officer of SVHC of (i) any employee termination so that said employee's access to SVHC's Confidential Information can be terminated, or (ii) any employee who becomes a member of the User Personnel so that said employee can be granted access to SVHC's Confidential Information.

SVHC will provide User with access codes (user names and passwords) which must be used to access the EMR. Access will be provided within fourteen (14) days of this Agreement being fully executed by the parties, barring any information technology issues that may arise. User agrees that the access code is the equivalent of a legal signature and that User is accountable and responsible for all work done using the SVHC access codes provided to User. No User Personnel shall disclose an access code to anyone other than the person who has been assigned such code. Moreover, employees of the User will not use an access code which is not one that is assigned to them.

User agrees that User Personnel are not permitted to access the SVHC Information Systems for anything other than the intended job-related purpose relating to patient treatment of shared patients. User Personnel are not permitted access to any other individual's health information because of a personal request, personal reasons or personal curiosity. Unauthorized access of the EMR, confidential files, or SVHC Information Systems without the proper security clearance and/or access authorization, for whatever reason, is considered a violation of the SVHC Security Policy ("SVHC Security Policy") and a violation of this Agreement.

Should User or any of its employees have reason to believe that SVHC's access code has been disseminated, breached or someone learns an access code that has not been assigned to him or her, User will immediately contact the Security Officer of SVHC in accordance with SVHC's policy.

Passwords cannot be shared or posted. Passwords will be changed on a regular basis per SVHC policy.

User Personnel must complete the Remote Secure Access (RSA) Agreement (copy attached as Exhibit A) to receive access to SVHC Information Systems. User for itself and the User Personnel agree not to release any authentication code or device or password to any other person or to allow anyone else to access SVHC Information Systems under a User Personnel's authentication code or device or password that has not been assigned to that person. User for itself and the User Personnel agree not to use or release anyone else's authentication code or device or password. User agrees to notify the SVHC Information Services Department immediately if any User Personnel becomes aware or suspects that an unauthorized person has access to SVHC authentication code or device or password.

6. **Computer Security.** User agrees to maintain adequate security procedures for the computers on which User Personnel access the SVHC Information Systems. User Personnel will abide by the minimum security and SVHC hardware and software desktop standards as provided to the User. User will not use or attempt to access SVHC Information Systems by any means not specifically authorized by SVHC, including but not limited to the use of any Internet or other non-secure means of connection. Neither User nor any User Personnel will take any action to avoid or disable any protection or security means implemented in the SVHC Information Systems or otherwise use any means to access SVHC Information Systems without following log-in procedures specified by SVHC.

7. **No Portable Media Devices.** User agrees that no Confidential Information shall be saved to any portable media devices (Floppies, ZIP disks, CDs, PDAs, and other devices).

8. **Printing Confidential Information.** If User Personnel prints Confidential Information, User Personnel will take reasonable safeguards to protect the printed Confidential Information from any access or use not authorized by this Agreement, and thereafter destroy such copies or place such copies in the medical record of the patient when they are no longer required for the purposes authorized herein.

9. **Return of Software or Equipment.** Upon request by the SVHC, User agrees immediately to return any software or equipment provided to User by SVHC, and to immediately to delete any software programs provided to User by SVHC.

10. **User Employee Training/Access.** User will undertake safeguards and training of the User Personnel to protect the Confidential Information from any access or use not authorized by this Agreement. User agrees to train User Personnel on the requirements of this Agreement and on SVHC confidentiality and security policies provided to the User by SVHC. User is responsible for its employees' compliance with all provisions of this Agreement and the SVHC confidentiality and security policies.

User will enforce the Agreement with its employees by implementing policies prohibiting employees from accessing patient information in SVHC's EMR that is not necessary for such employee's professional duties. User will enforce such policies by bringing appropriate disciplinary action for any violations and will immediately inform SVHC of any violation of such policies by any employee.

11. **Auditing Compliance.** User agrees that User's compliance with this Agreement may be subject to review and/or audit by SVHC. Audits may be as frequent as daily or as deemed appropriate by SVHC.

12. **Limitation of Liability of SVHC/Exclusions of Warranties.** The parties agree that User is responsible for the ultimate decisions and medical judgment related to the diagnosis and treatment of its patients. User understands and agrees that remote access to electronic records involves technological risks, including possible introduction of errors, data corruption, and artifacts that may not be present on original versions of radiological results. User understands that images accessed remotely may not have the same degree of clarity as images viewed on-site. User agrees that SVHC will not be liable for any direct, indirect, incidental, special or other damages incurred by User arising out of such technological risks of or inability to use the SVHC Information System. SVHC does not guarantee or warrant the availability of remote access of SVHC Information System. The parties recognize that remote access introduces unique risks associated with unrelated software that may exist on the remote access device that compromises the integrity and security of data and remote access, including but not limited to spyware, hacker access, viruses, worms, and other harmful software (collectively referred to as "Remote Access Risks"). Accordingly, SVHC will not be responsible for any losses or damages related to Remote Access Risks. User assumes all liability and risks associated with employee access and use of remote access to SVHC Information Systems.

13. **Response to Confidentiality Concerns.** Whenever SVHC in its sole judgment and discretion believes that User or any User employee or Personnel, has obtained unauthorized access to Confidential Information, has disclosed Confidential Information inappropriately or in violation of federal or state laws or regulations, has violated any SVHC policies or procedures regarding confidentiality or the use of Confidential Information or the SVHC confidentiality and security policies and procedures, or has violated any provisions of this Agreement, SVHC is entitled to take any or all of the following actions immediately, as it determines to be appropriate:

- a. Notify User of User employee's conduct.
- b. Suspend or terminate User's or User employee's remote access to SVHC Information Systems until SVHC concerns are adequately addressed.

- c. Report the User employee to a professional board and any other regulatory or law enforcement entity, as appropriate.
- d. Terminate this Agreement on written notice to User, effective on the date notice is given.
- e. Bring legal action to enforce this Agreement.

14. **Continuing Obligations.** User agrees that its obligations to protect and maintain the confidentiality of the Confidential Information under this Agreement shall continue in the event any User Personnel is no longer employed with User, or providing services to the User, or User Personnel medical staff privileges are terminated or expire, or in the event that this Agreement is terminated.

15. **Term and Termination.** This Agreement shall be effective as of the date first set forth above, and shall continue in full force and effect until (i) terminated by User under Section 3 of this Agreement, (ii) terminated by SVHC under Section 13 of this Agreement, (iii) 30 days following delivery of written notice of termination by either party, or (iv) terminated by either party under Section 19 of this Agreement.

However, SVHC reserves the right to terminate one's access to the Confidential Information systems at any time at its discretion for reasons including, but not limited to misuse of one's access, failure to adhere to the conditions of this Agreement or SVHC's policies, or a breach of confidentiality. Furthermore, as an additional security measure, any authorized user ID that has not logged in for a period of 90 days will automatically be disabled.

16. **Non-Assignment.** Neither party may assign this Agreement or their rights hereunder without the prior written permission of the other party.

17. **Notice.** All notices required by this Agreement shall be in writing, and shall be deemed effective when personally delivered, five business days after being mailed by certified or registered mail, return receipt requested; or two business days after being deposited with a comparably reliable postage delivery service, such as Federal Express; addressed to the other party as follows:

If to User:

If to SVHC: Rich Ogilvie
Chief Information Officer
SVHC
100 Hospital Drive
Bennington, VT 05201

18. **Waiver.** Any waiver of any of the terms or conditions of this Agreement by any party shall not be construed as a general waiver of the same condition for any subsequent breach.

19. **Additional Safeguards.** User understands and agrees that the HIPAA Security Regulations require SVHC and User to have security and privacy processes, practices and technical requirements in connection with the access and use of electronic Confidential Information. SVHC reserves the right to impose additional information systems security safeguards, including without limitation software and hardware requirements, to comply with the security standards. If User elects to not adhere to these new requirements, User and/or SVHC may terminate this Agreement immediately by delivering a written notice of termination to the other party.

20. **Misuse of Confidential Information.** User understands and agrees that any misuse of the confidential access code or violation of systems policies will be considered a violation of SVHC's policies and could subject User to legal action. Specifically, User acknowledges that the information to which User will be granted access involves confidential patient records, protected health information and other demographic information which is governed by various privacy laws. User further understands and agrees that access to this information will be routinely audited by SVHC personnel to insure that only properly authorized individuals with a "need to know" are accessing patient data. The patient data to which User will have access is the same data that is available in the patient's medical record and must be treated with the same degree of confidentiality with which the paper record is treated. In the event that the User is accessing medical record information to which User has no need to know, or if it is determined that User is otherwise misusing User's access capabilities, User's right of access may be revoked. User further understands and agrees that HIPAA violations may lead to fines and imprisonment and liability to the User.

21. **Insurance.** During the Term of this Agreement:

- (i) User shall carry insurance coverage for data security breach and privacy losses.
- (ii) User has a malpractice insurance policy in an amount no less than \$1,000,000.00 for each occurrence or \$3,000,000.00 in the aggregate for its employees and staff.
- (iii) User shall require its insurance carrier(s) to provide SVHC with at least thirty (30) days' prior written notice of cancellation, termination, modification or amendment to such insurance coverage.
- (iv) User shall provide to SVHC documentation evidencing such coverage for all occurrences during the term of this Agreement.

22. **Confidential Information Exclusive Property of SVHC.** User understands and agrees that the Confidential Information shall at all times remain the exclusive property of SVHC. User agrees that SVHC would be irreparably harmed by a disclosure of the patient data and protected health information contained in SVHC's EMR. Consequently, User agrees that in the event of a disclosure or a threatened disclosure, SVHC shall, in addition to any other remedy to which it might be entitled, be entitled to obtain a temporary restraining order, preliminary injunction and permanent injunction against the disclosure or threatened disclosure; all relief shall be available to SVHC without the necessity of posting a bond.

23. **Attorney's Fees.** In the event of a breach of this Agreement in addition to any other remedy to which it might be entitled, SVHC shall be entitled to recover from User its reasonable attorney fees and costs incurred in the enforcement of its rights hereunder

24. **Indemnification.** User agrees to indemnify, defend and hold harmless, SVHC and its affiliates, and their respective members, trustees, officers, directors, employees and agents, from and against any claim, cause of action, liability, damage, cost or expense, including without limitation, reasonable attorneys' fees and costs, arising out of or in connection with any unauthorized or prohibited use or disclosure of SVHC Information Systems, the Confidential Information, or any other breach of the SVHC security policies or this Agreement by User or any User Personnel, including, without limitation, any HIPAA violations.

User shall be responsible for all expenses reasonably incurred by SVHC in responding to a breach of the Confidential Information resulting from User and User Personnel having access to the Confidential Information and the SVHC Information Systems, except to the extent that any such breach is directly attributable to the acts or inaction of SVHC or its officers, employees, contractors or agents.

25. **Governing Law.** This Agreement shall be governed by and construed in accordance with, the laws of the State of Vermont. Jurisdiction and venue shall be in Bennington County, Vermont.

26. **Amendments.** This Agreement may be amended at any time by mutual agreement of the parties hereto, but any such amendment shall not be operative or valid, unless the same is reduced to writing and executed by the User and SVHC.

27. **Entire Agreement.** This Agreement contains the entire agreement of the parties with respect to the matters addressed herein and supersedes all other agreements between the parties, whether oral or in writing, concerning such matters.

28. **Counterparts.** This Agreement may be executed in separate counterparts, each of which is deemed to be an original, and all of which taken together constitute one and the same Agreement.

IN WITNESS WHEREOF, this Agreement has been executed on the day and year first above written

Individual with Authority to Execute Contract for Organization

By: _____
Name:
Title:
Date: _____

SVHC

By: _____
Name:
Title:
Date: _____

Exhibit "A"

User employees who shall be permitted to have access to SVHC's Confidential Information under this Agreement as of the date of the Agreement:

Physicians:

Mid-Levels: