

## AGREEMENT FOR THE PROVISION OF SPORTS MEDICINE SERVICES

This Sports Medicine Services Agreement (“Agreement”) is entered into as of **August 1, 2019** (“Effective Date”), by and between **St. Mary’s Duluth Clinic Health System, dba Essentia Health East**, on its own behalf and on behalf of its affiliates, including The Duluth Clinic, Ltd. (referred to individually and collectively as “**Essentia**”), and **Independent School District #709, also known as Duluth Public Schools (“DPS”)**.

### RECITALS

- A. Essentia is a Minnesota nonprofit corporation whose purposes include advancement of healthcare in the region that it serves.
- B. DPS is a Minnesota independent school district which is required to provide professional sports medicine services to its student athletes.
- C. DPS wishes to obtain from Essentia, and Essentia wishes to provide, sports medicine services to be provided by one or more Essentia-employed health care professionals as set forth in this Agreement.

### AGREEMENT

- 1. **Professional Services.** Essentia-employed physicians and certified athletic trainers or registered physical therapists with a sports medicine interest (“Professionals”) will provide the services described in Exhibit A (“Services”). Prior to the commencement of this Agreement, Essentia will provide DPS with the name(s) of the Professionals who will provide Services under this Agreement, and will notify DPS of any change. Essentia will ensure that Professionals perform the Services in compliance with applicable statutes, regulations, and standards of federal, state and other governmental and regulatory bodies having jurisdiction over the Professionals.
- 2. **Schedule.** The scheduling of time spent by Professionals in the provision of Services shall be mutually agreed upon by Essentia and DPS; the parties anticipate the schedule and amounts to be approximately as described on the attached Exhibit A, and time spent providing Services may be unevenly divided among the months. If the parties are unable to agree on the scheduling and/or the amount of Services, either party may terminate this agreement as set forth in subsection 12.b.
- 3. **Space, Equipment, Staff Services and Supplies.** Essentia shall purchase and provide athletic training supplies up to \$1000 per year per DPS high school. DPS shall make available to Professionals all such other space, equipment, staff services and supplies as may be necessary for Professionals to provide the Services hereunder.
- 4. **Further Obligations of DPS.** DPS agrees to the obligations set forth in Exhibit B.
- 5. **Compensation; Marketing Fees.** Essentia will provide the Services to DPS in exchange for the performance by DPS of its obligations set forth in this Agreement, and will provide DPS three hundred twenty-five thousand dollars (\$325,000) payable as follows:

- within thirty days of the date this Agreement is fully executed, \$100,000 to purchase new weight room equipment at Denfeld High School and East High School
- within thirty days of the first, second, third, and fourth anniversary dates, \$56,250 to be distributed in equal parts to Denfeld High School and East High School to improve athletic facilities and support services associated with student wellness

## 6. Relationships.

- Relationship between Essentia and DPS. The parties to this Agreement are at all times performing as independent contractors. Nothing in this Agreement shall constitute or be construed as the creation of an employment relationship, partnership, or joint venture between DPS and Essentia and/or Professionals, or any of their agents or employees. Neither Essentia nor any of its agents or employees is to be considered an agent or employee of DPS for any purpose. Essentia and DPS shall each be solely responsible for acts and omissions of itself, its employees and its agents.
- Relationship to DPS Students. This Agreement does not create an express or implied contract to provide care to DPS students beyond that which is set forth herein. Further, Essentia's commitment to provide Services hereunder does not obligate DPS student athletes to utilize such Services.

Persons who receive Services are being served as students of DPS and not as patients of Essentia. Essentia and Professionals have no clinical obligation to these students beyond the provision of Services, except to the extent that Professionals may be reasonably expected to respond to an emergent situation which is identified through or which results from the provision of Services. It is each student's responsibility to obtain any medical care that may be necessary/appropriate and which is outside the scope of this Agreement, and it is the student's prerogative to choose the provider from whom or from which such medical care (if any) is obtained.

- ~~Non-Exclusivity Relationship.~~ In addition to its marketing opportunity obligations hereunder, without the prior written approval of Essentia DPS agrees not to offer, grant, or sell the right to name any portion or subordinate portion of a DPS facility, including but not limited to high schools, sports centers, and stadiums, or to place any permanent or temporary signs about a DPS facility to any third party: i) whose primary business falls within the category of providing healthcare services, ii) who engages in business activities or offers products or services that are competitive with one or more of Essentia's products or services, or iii) who otherwise could be reasonably identified by Essentia or the public to be a direct competitor of Essentia in the provision of healthcare services. Essentia or any of its affiliates may enter into agreements with any other party for the same or similar services.

- Record Retention.** Essentia shall not retain any medical documentation related to Professionals' provision of Services hereunder. Information related to the provision of Services will be provided to DPS for maintenance in its student medical records. DPS assumes all responsibility for ensuring that any such information obtained from Essentia is maintained in a manner that complies with applicable federal and state laws and regulations, including, but not limited to, the Family Educational Rights and Privacy Act (FERPA).

8. **Insurance.** Each party shall, at its expense, carry liability and professional liability insurance or provide self-insurance covering its acts and omissions under this Agreement, with limits of at least \$1 million per claim and \$3 million aggregate.
9. **Compliance.** Both parties shall comply with applicable state and federal laws and regulations including but not limited to the Family Educational Rights and Privacy Act (FERPA), the Health Insurance Portability and Accountability Act of 1996, as amended, and regulations promulgated thereunder (“HIPAA”), laws and rules governing the provision of health care and payment therefor, the Occupational Safety and Health Administration regulations, and legal standards relating to the interaction of personnel in the workplace.
10. **Confidentiality.** Both parties shall maintain the confidentiality of student and medical information, in accordance with applicable state and federal laws, rules and regulations. All documentation and records relating to Professionals’ provision of Services hereunder shall be and remain the sole property of DPS, subject to the student’s rights in such documentation and records. As a result of Essentia’s provision of Services, the parties may have access to or become acquainted with confidential information relating to each other’s business operations. Both parties, on their own behalf and on behalf of their employees, acknowledge the importance to the other party of maintaining the confidentiality of such information and agree never to use or disclose such information except as necessary to carry out their obligations under this Agreement. Upon termination of this Agreement, both parties agree to return to each other all copies of data, records or other tangible documents which contain, embody or disclose, in whole or in part, any confidential patient information or any general confidential information. The provisions of this Section 10 shall survive the termination of this Agreement.

For purposes of this Section 10, “confidential information” shall not include: (a) information generally known to the public; (b) information which becomes known to the public through no action of either Essentia or DPS; or (c) information for which the disclosure has been consented to by each of the parties.

11. **Indemnification.** The parties are each responsible for their own acts or omissions, and are not liable for the acts or omissions of, or the costs of defending, others. Nothing in this section shall preclude a finding of liability on the part of either party based on the doctrines of equitable indemnity, comparative negligence, contribution, or other statutory or common law basis for liability.
12. **Term and Termination.** Unless sooner terminated as provided for herein, this Agreement shall remain in effect for five (5) years, expiring on **July 31, 2024** and shall not automatically renew. This Agreement may be terminated as follows:
- a. Mutual Written Agreement. This Agreement may terminate at any time upon written agreement of the parties.
  - b. For Cause. Either party may terminate this Agreement with cause upon default by the other party under any material term of this Agreement and failure of the defaulting party to cure such default within sixty (60) days after receipt of written notice specifying the precise nature of such default. Upon failure to cure such default, this Agreement shall terminate upon written notice. For purposes of this subsection 12.b, “for cause” shall include, but not be limited to, failure by DPS to follow the advice of Professionals regarding the health and safety of student athletes.

- c. Change in Law. In the event there are changes or clarifications to any applicable laws, rules or regulations that affect, in the opinion of either party's legal counsel, any legal right of any party to this Agreement, the affected party may notify the other party. Upon such notice, the parties shall engage in good faith negotiations regarding any appropriate modifications to this Agreement. If the parties are unable to agree to modifications, either party may terminate this Agreement by providing at least sixty (60) days' notice to the other party.
- d. Jeopardy; Immediate Termination. Essentia may terminate this Agreement immediately with no penalty if, in its sole determination and discretion, the Agreement places Essentia or any of its affiliates at risk of adverse action by any state or federal governmental agency or accrediting body, including, but not limited to licensing and non-profit or tax-exempt status.
- e. Effect of Termination. In the event this Agreement is terminated by Essentia for cause, DPS shall refund to Essentia a pro-rated portion of the funds paid to DPS pursuant to section 5 for any incomplete term year. By way of example only, and not limitation, if the Agreement is terminated in the sixth month of the second year, DPS would be required to reimburse Essentia \$12,500.

**13. Notices.** All notices, requests and other communications that a party is required or elects to deliver shall be in writing and shall be delivered personally, by certified mail or via recognized overnight courier service, to the other party at its address set forth below, or to such other address as such party may designate by notice pursuant to this section. Notice shall be effective when received if delivered by hand, or on the date shown on the return receipt, if by certified mail or courier service.

|  |                           |
|--|---------------------------|
| If to Essentia                         | With a copy to:           |
| St. Mary's Duluth Clinic Health System | Essentia Health           |
| Attn: SVP, Operations                  | Office of General Counsel |
| 520 East Second Street                 | 502 E. Second Street      |
| Duluth, MN 55805                       | Duluth, MN 55805          |

|                                  |  |
|----------------------------------|--|
| If to DPS                        |  |
| Independent School District #709 |  |
| Attn: <u>Superintendent</u>      |  |
| 215 North First Avenue East      |  |
| Duluth, MN 55802                 |  |

**14. Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the State of Minnesota, without giving effect to the conflict of laws principles thereof.

**15. Force Majeure.** Each party shall be excused from performance of its obligations under this Agreement to the extent such performance is prevented, restricted or interfered with by reason of fire, flood, earthquake, explosion or other casualty or accident, strikes or labor disputes, unanticipated Professional illness or other temporary Professional unavailability through no fault of Essentia, war, act of terrorism or other violence, invasion by

extraterrestrials, or any law, order, proclamation, regulation or ordinance, or demand or requirement of any government agency. The party so affected, upon giving prompt notice to the other party, shall be excused from such performance to the extent of such prevention, restriction or interference, provided, however, that the party so affected shall take all reasonable steps to avoid or remove such cause of nonperformance and shall resume performance hereunder with dispatch whenever such causes are removed.

**15. Miscellaneous.** Neither party may assign this Agreement without the prior written consent of the other. The parties agree to amend this Agreement as necessary to comply with any changes in applicable laws and regulations. This Agreement constitutes the entire contract between the parties with respect to the subject matter hereof. **Specifically, this Agreement supersedes that certain Sports Medicine Services Agreement between DPS and St. Mary’s Duluth Clinic Health System, effective August 1, 2016, which the parties mutually agree terminates contemporaneously with the Effective Date of this Agreement.** It may be executed in any number of counterparts, each of which will be deemed to be the original. No amendment to this Agreement or any exhibit shall be effective unless in writing and signed by both parties. The waiver by either party of a breach of any provision of this Agreement will not be deemed a waiver of any subsequent breach of the same or a different provision. If any provision of this Agreement is illegal, invalid, or unenforceable under present or future laws effective during the term of this Agreement, that provision shall be fully severable. The remaining provisions shall remain in effect, and this Agreement shall be construed and enforced as if the illegal, invalid or unenforceable provision had never been a part of this Agreement.

**St. Mary’s Duluth Clinic Health System**

**Independent School District #709**

By: **DRAFT-DO NOT SIGN**

By: **DRAFT-DO NOT SIGN**

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

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

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

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

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

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

**Essentia Health Marketing Department**

By: **DRAFT-DO NOT SIGN**

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

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

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

## EXHIBIT A SERVICES

Through its Professionals Essentia shall:

- provide professional sports medicine services to DPS with the objective of enabling high school student athletes to play to their full potential;
- provide a strength and conditioning coach at each DPS high school, up to 90 minutes per day, Monday through Thursday, during each school year;
- assign a team physician who shall supervise and may provide backup coverage for the Essentia-assigned certified athletic trainer(s).
- provide DPS with protocols and practices regarding the assessment and treatment of student athletes;
- coordinate sports medicine services provided by Essentia and/or by other health care providers and/or by DPS personnel;
- direct student athletes to DPS on-campus medical facilities for treatment of injuries when in the opinion of Professional(s), it is medically appropriate to do so;
- assign to DPS one or more Professional(s) who are certified athletic trainers to provide services including, but not necessarily limited to the following services, all of which shall be provided in accordance with established protocols and under the medical supervision of the team physician:
  - provide on-duty coverage at the training room, such coverage is estimated to be 2:30 p.m. to 10 p.m. during regular school days, not to include holidays or Sundays, and is further subject to practices and events;
  - provide event coverage for home events for contact/collision sports and provide event coverage for all other sports for home events if mutually agreed to in advance by the parties (coverage would not include Sundays); travelling and providing coverage for "away" varsity events will be based upon DPS need and subject to availability of Essentia staff, and will be as mutually agreed to by the parties on a case-by-case basis
  - provide routine/daily training services such as preventive care, assessment and treatment of injuries, rehabilitation of injuries, and assessment of readiness for sports participation;
  - keep an inventory of and arrange for procurement of needed trainer's equipment and supplies;
  - act as the primary liaison between student athletes, coaching staff and other health care providers in matters pertaining to evaluation and treatment of sports-related injuries and other health problems;
  - carry out on-site evaluation and immediate care of injuries/health problems; "evaluation" typically includes an assessment of the student athlete's readiness to continue or resume practice or play;
  - recommend to students any further evaluation and care that may be required but is beyond the scope of Services provided by Essentia hereunder;
  - carry out preventive and rehabilitative care under the direction of the team physician or a registered physical therapist (RPT) who has established a rehabilitative plan of care;
  - report to the coaching staff on a regular basis regarding each student athlete's readiness to play;
  - report information to coaching staff that is specific to any student athlete who is being evaluated or treated for any injury or health problem;

- communicate with the team physician on a regular basis regarding student athletes' readiness to play and the status of all students being evaluated or treated for any injury or health problem; and
- provide such additional services based upon need and availability as mutually agreed to by the parties.

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## EXHIBIT B OBLIGATIONS OF DPS

### General obligations:

- ensure that health history and consent for participation/treatment forms are obtained for each student athlete prior to and as a condition of participation in DPS sports programs;
- provide Essentia with input regarding the selection of Professionals;
- provide Essentia with feedback regarding Professionals' performance of Services hereunder;
- recognize the responsibility and authority of Professionals to direct the care of injured student athletes and to determine the type(s) of treatment required;
- recognize the responsibility and authority of Professionals to make final determinations regarding each student athlete's ability to safely participate in practices and athletic events;
- ensure that coaching staff members respect Professionals' assessments of student athletes' readiness to safely participate in practices and athletic events;
- provide a means for DPS coaches to communicate with Professionals during all practices and athletic events;
- appoint a liaison to work with Professionals as may be required for Professionals to provide Services hereunder;
- work cooperatively with Essentia to determine at which events Professionals must provide on-site Services; and
- maintain student records relating to Professionals' provision Services hereunder, and to release such records only as may be permitted by applicable laws and regulations.

### Marketing opportunity obligations:

- acknowledge at all home games/venues, via signage, program advertisement and public address announcement, that orthopedic & sports medicine services are provided by Essentia;
- ensure all acknowledgments are healthcare industry exclusive, with the exception of limited visibility from lower tier sponsorship support subject to DPS obtaining Essentia's prior written approval
  - Essentia shall be recognized as a top-tier (highest) supporter with any additional partnership/sponsorship opportunities with DPS. Any additional partners at the same top-tier level shall not be a direct competitor of Essentia. Sponsorships from competitors should not include signage (any existing signage in the facilities can remain during current contract duration, but not be renewed and nothing new can be added);
- at Essentia's sole cost and expense, grant sole rights to Essentia on all signage on training room and weight room doors, and all other sports venues, to acknowledge that orthopedic & sports medicine services are provided by Essentia, signage to be prominently displayed.
- use information approved or provided by Essentia, including ads, logos, scripting, etc. for the signage, public address announcement and program advertisement
  - at DPS request Essentia shall provide custom ads, scripting, etc.
- provide additional promotion opportunities as agreed to Essentia's marketing team and DPS;
- ensure DPS coaches aware of the Services being provided by Essentia; and



- ensure Booster Clubs are aware that Services are being provided by Essentia at no cost in exchange for the opportunities set out in this Agreement.

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