

SPONSORSHIP AGREEMENT

This Sponsorship Agreement (“Agreement”) is entered into as of **August 15, 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. To further its purpose, DPS conducts high school athletic training and athletic events attended by the public (“Athletic Program”).
- C. The parties enter into this Agreement to set forth and define the terms of Essentia’s exclusive sponsorship (as defined below) of the Athletic Program in exchange for certain contributions to DPS. Accordingly, Essentia and DPS agree as follows

AGREEMENT

1. **Sponsorship.** During the term of this Agreement, DPS agrees to identify and acknowledge Essentia as an exclusive sponsor (as defined below) of the Athletic Program by displaying Essentia’s logo and other agreed-upon identifying information, and performing other obligations, as described in Exhibit A. Essentia shall be permitted to use DPS’s name, acronym and logo for the sole purpose of promoting Essentia’s sponsorship of the Athletic Program.
2. **Exclusivity.** In addition to its sponsorship 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, or ii) 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.
3. **Sponsorship Contribution.** In consideration for the right to sponsor the Athletic Program as described herein, Essentia agrees to make a cash contribution to DPS of \$325,000.00 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 the Athletic Program and support services associated with student wellness

4. **License of Intellectual Property.**

- a. DPS. DPS is the sole owner of all right, title, and interest to all DPS information, including DPS's logo, trademarks, trade names, and copyrighted information, unless otherwise provided. DPS hereby grants to Essentia a limited, non-exclusive license to use certain of DPS's intellectual property, including DPS's name, acronym, and logo (collectively, the "DPS Property"), solely in connection with promotion of Essentia's sponsorship of the Athletic Program. Essentia agrees that it shall not use DPS's Property in a manner that states or implies that DPS endorses Essentia (or Essentia's products or services). It is understood that DPS retains the right to review and approve in advance all uses of such intellectual property, which approval shall not be unreasonably withheld.
- b. Essentia. Essentia is the sole owner of all right, title, and interest to all Essentia information, including Essentia logos, trademarks, trade names, and copyrighted information, unless otherwise provided. Essentia hereby grants to DPS a limited, non-exclusive license to use certain of Essentia's intellectual property, including names, trademarks, and copyrights (collectively, "Essentia Property"), solely to identify Essentia as a sponsor of the Athletic Program. It is understood that Essentia retains the right to review and approve in advance all uses of such intellectual property, which approval shall not be unreasonably withheld. Essentia represents and warrants that it has not previously disposed of any of the rights herein granted to DPS nor previously granted any rights adverse thereto or inconsistent therewith; that there are no rights outstanding which would diminish, encumber or impair the full enjoyment or exercise of the rights herein granted to DPS; and that the Essentia Property does not and will not violate or infringe upon any patent, copyright, literary, privacy, publicity, trademark, service mark, or any other personal or property right of any third party.
- c. Upon termination or expiration of this Agreement, all rights and privileges for use of the other party's Property shall expire, and each party shall discontinue the use of such other party's Property.

5. **Relationship of the Parties.** The parties to this Agreement are always 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, or any of their agents or employees. Essentia and DPS shall each be solely responsible for acts and omissions of itself, its employees and its agents.

6. **Term and Termination.** Unless sooner terminated as provided for herein, this Agreement shall remain in effect for five (5) years, expiring on **August 14, 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.

- 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. Termination by Essentia. The parties have contemporaneously entered into a coterminous sports medicine services agreement. In the event the sports medicine services agreement terminates for any reason, Essentia may terminate this Agreement with thirty (30) days' written notice to DPA.
- f. Effect of Termination. In the event this Agreement is terminated by either party for any reason, DPS shall refund to Essentia a pro-rated portion of the contribution paid to DPS pursuant to section 3 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.

7. Insurance; Indemnification. Each party shall, at its expense, carry general and commercial liability insurance or provide self-insurance covering its acts and omissions under this Agreement, with limits of at least \$1 million per claim and \$1.5 million aggregate. 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.

8. Confidentiality. As a result of Essentia's sponsorship of the DPS Athletic Program, 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 8 shall survive the termination of this Agreement.

For purposes of this section 8, "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.

9. 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: Superintendent	
215 North First Avenue East	
Duluth, MN 55802	

10. 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.

11. 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 illness or other temporary unavailability through no fault of Essentia or DPS, war, act of terrorism or other violence, 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. 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.

Signature Page Follows

Signature Page to Sponsorship Agreement

St. Mary's Duluth Clinic Health System

By: _____

Print name: _____

Title: _____

Date: _____

Independent School District #709

By: _____

Print name: _____

Title: _____

Date: _____

Essentia Health Marketing Department

By: _____

Print Name: _____

Title: _____

Date: _____

Exhibit A Obligations of DPS

DPS shall:

- 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 home sports venues, to acknowledge that orthopedic & sports medicine services are provided by Essentia, signage to be prominently displayed with approval of the DPS facilities director to ensure compliance with then-current DPS policies and requirements;
- 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.; and
- provide additional promotion opportunities as agreed to by Essentia's marketing team and DPS at no additional cost to Essentia, including, but not limited to, advertising in Booster Club programs, events and deliverables.