

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“Agreement”) is entered into by and between CentraCare Health, a Minnesota nonprofit 501(c)(3) organization (the “Covered Entity”) and _____ (the “Business Associate”) (each a “Party” and collectively the “Parties”) for the purposes of compliance with the requirements established by the Standards for Privacy of Individually Identifiable Health Information and by the Security Standards for the Protection of Electronic Protected Health Information published by the U.S. Department of Health and Human Services Office for Civil Rights under the Health Insurance Portability and Accountability Act of 1996 as amended from time to time (“HIPAA Act”) with respect to the use, protection and disclosure of Protected Health Information in whatever form including electronic PHI (“PHI”), the Health Information Technology for Economic and Clinical Health Act of 2009, as codified at 42 U.S.C.A. prec. § 17901 (“HITECH Act”), and any current and future regulations promulgated under the HIPAA Act or the HITECH Act (the HIPAA Act, the HITECH Act and any current and future regulations promulgated under either are referred to as “HIPAA”).

Background. The Covered Entity has a formal, informal, written or unwritten agreement or relationship with Business Associate (the “Covered Agreement”) pursuant to which the Business Associate is providing services to the Covered Entity which will involve the use or disclosure of PHI by Covered Entity to Business Associate. In addition, the Covered Entity and Business Associate may be receiving or transferring PHI electronically subject to HIPAA requirements regarding privacy and electronic security.

Now, therefore, intending to be legally bound, the Parties agree as follows:

1. **Definitions.** Capitalized terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in 45 C.F.R. including particularly sections 160.103, 164.103, 164.304, 164.402 and 164.501 as amended from time to time.
2. **Obligations and Activities of Business Associate.** Business Associate agrees to the following obligations:
 - a. Business Associate will not use or further disclose PHI other than as permitted or required by this Agreement or as Required by Law;
 - b. Business Associate will prevent use or disclosure of PHI other than as provided for in this Agreement;
 - c. Business Associate will implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of PHI that it receives, maintains or transmits on behalf of the Covered Entity;
 - d. Business Associate will mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement;
 - e. Business Associate will report to Covered Entity any use or disclosure of the PHI not provided for by this Agreement as well as any Security Incident of which it becomes aware;
 - f. Business Associate will notify Covered Entity of any Breach of Unsecured PHI, including Security Incidents, as soon as possible but in any event within at least three (3) calendar

days from the date of discovery of the breach and assist Covered Entity in providing notice of the Breach of Unsecured PHI to affected individuals and other required under HIPAA. Business Associate shall provide the following information to Covered Entity with its notification:

- i. the date of the Breach;
- ii. the date of the discovery of the Breach;
- iii. a description of the types of Unsecured PHI that were involved;
- iv. identification of each individual whose Unsecured PHI has been, or is reasonably believed to have been, accessed, acquired, or disclosed;
- v. identification of the corrective action Business Associate took or will take to prevent further non-permitted access, use or disclosure;
- vi. identification of what Business Associate did or will do to mitigate any deleterious effect of the non-permitted access, use or disclosure; and
- vii. any other details necessary to complete an assessment of the risk of harm to the individual.

Covered Entity will be responsible to provide notification to individuals whose Unsecured PHI has been disclosed, as well as the Secretary of the Department of Health and Human Services (“Secretary”) and the media, unless Covered Entity requests that Business Associate provide the required notifications;

- g. Business Associate will pay actual costs for notification and any associated mitigation incurred by Covered Entity, such as credit monitoring, if Covered Entity determines that the Breach is significant enough to warrant such measures;
- h. Business Associate will establish procedures to investigate the Breach, mitigate losses, and protect against any future Breaches, and to provide a description of these procedures and the specific findings of the investigation to Covered Entity in the time and manner reasonably requested by Covered Entity;
- i. Business Associate will ensure that any agent, including a subcontractor, of the Business Associate that creates, receives, maintains, or transmits PHI on behalf of Covered Entity agrees to the same restrictions and conditions that apply throughout this Agreement to Business Associate with respect to such PHI and agrees to implement reasonable and appropriate safeguards to protect PHI through the execution of a formal written business associate agreement with the Business Associate;
- j. Business Associate will provide access, at the request of Covered Entity, and in the time and manner designated by Covered Entity, to PHI in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 C.F.R. 164.524;
- k. Business Associate will make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 C.F.R. 164.526 at the request of Covered Entity or an Individual, and in the time and manner designated by Covered Entity;
- l. Business Associate will make internal practices, books and records relating to the use and disclosure of PHI received from or created or received by Business Associate on behalf of Covered Entity available to the Secretary, in a time and manner designated by the Covered

Entity or the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule. Business Associate shall immediately notify Covered Entity upon Business Associate's receipt of any such requests from Secretary and shall provide copies of same. Nothing in this section shall be deemed a waiver of any legally-recognized privilege available to either Party;

- m. Business Associate will document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. 164.528;
- n. Business Associate will provide to Covered Entity or an Individual, in time and manner designated by Covered Entity, information collected in accordance with Section 2(f) of this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. 164.528;
- o. Business Associate will comply with the Privacy Rules, the Security Rules, HIPAA including amendments under the American Recovery and Reinvestment Act ("ARRA"), including, but not limited to, implementing written policies and procedures, conducting a security risk assessment and training employees who have access to PHI about the policies and procedures required by HIPAA and ARRA;
- p. To the extent the Business Associate is to carry out Covered Entity's obligation under HIPAA, Business Associate will comply with the requirements of HIPAA that apply to the Covered Entity in the performance of such obligation;
- q. Business Associate will not use any PHI for marketing purposes unless Business Associate has obtained advanced written and signed consent from Covered Entity authorizing the marketing and then only if Business Associate complies with all requirements under HIPAA regarding such marketing;
- r. Business Associate will not directly or indirectly receive remuneration in exchange for any PHI unless Business Associate: (i) has obtained prior written approval from Covered Entity; and (ii) has received a valid authorization from the individual that specifies that Business Associate can further exchange PHI about the individual for remuneration by the entity receiving the PHI, in accordance with the requirements of 45 C.F.R. §164.508 and HITECH Act. The foregoing provision shall not apply to Covered Entity's payment to Business Associate for Services provided under this Agreement;
- s. Business Associate will not provide or transmit PHI to anyone outside the geographical boundaries of the United States for any purpose or permit anyone located outside the geographical boundaries of the United States access to PHI, including an employee, agent or subcontractor, without the prior written approval of Covered Entity; and
- t. At Covered Entity's request, Business Associate will implement reasonable alternative means or locations of communication with an individual, as necessary, to honor a request granted by Covered Entity pursuant to 45 C.F.R. §§ 164.522 or 164.526, respectively.
- u. For Security Incidents that do not result in unauthorized access, use, disclosure, modification, or destruction of PHI, (including for purposes of example and not for purposes of limitation, pings on a Business Associate's firewall, port scans, attempts to log

into a system or enter a database with an invalid password or username, or denial-of service attacks that do not result in a system being taken off-line) Business Associate shall provide, upon request from Covered Entity, a report that (a) identifies categories of security incidents; (b) indicates whether Business Associate believes its current defensive measures are appropriate to address categories of identified security incidents; and (3) if defensive measures are not adequate, the measures Business Associate will implement to address the security inadequacies.

- v. If Business Associate conducts Standard Transaction for or on behalf of Covered Entity, Business Associate will comply, and will require each subcontractor or agent involved with the conduct of such Standard Transactions to comply, with each applicable requirement of 45 CFR Part 162. Business Associate will not enter into, or permit its subcontractors or agents to enter into, any trading partner agreement in connection with the conduct of Standard Transactions for or on behalf of Covered Entity that: (i) changes the definition, data condition, or use of a data element of segment in a Standard Transaction; (ii) adds any data elements or segments to the maximum defined data set; (iii) uses any code or data element that is marked "not used" in the Standard Transaction's implementation specification or is not in the Standard Transaction's implementation specification; or (iv) changes the meaning or intent of the Standard Transaction's implementation specification.
3. **Minimum Necessary.** Business Associate agrees to limit its use, disclosure and requests for use or disclosure to the minimum amount necessary to accomplish the intended purpose of the use, disclosure or request in accordance with the requirements of HIPAA. Covered Entity may, pursuant to HIPAA, reasonably rely on any requested disclosure as the minimum necessary for the stated purpose when the information is requested by Business Associate.
 4. **Permitted Uses and Disclosures by Business Associate.** Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI to perform functions, activities or services for, or on behalf of, Covered Entity as specified in the Covered Agreement, and in accordance with Covered Entity's Privacy Notice, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity, and further, Business Associate may:
 - a. use PHI for Business Associates proper management and administration duties or to carry out Business Associate's legal responsibilities;
 - b. disclose PHI for the proper management and administration of the Business Associate, provided that disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached; and
 - c. use PHI to provide data aggregation services relating to the health care operations of the Covered Entity only if Business Associate has received separate and prior written consent of Covered Entity.
 5. **Obligations of Covered Entity.** Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity. Also, Covered Entity agrees to provide Business Associate with:

- a. notice of any limitation(s) in the notice of privacy practices of Covered Entity under 45 C.F.R. § 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI;
- b. any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent such changes affect Business Associate's permitted or required use or disclosure of PHI; and
- c. notice of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. § 164.522 to the extent that such restriction may affect Business Associates use or disclosure of PHI.

6. **Term and Termination.**

- a. Term. The Term of this Agreement shall be effective as of the Effective Date listed below, and shall continue until terminated as provided herein.
- b. Termination Upon Termination of the Covered Agreement. This Agreement will terminate upon the termination of the Covered Agreement and when: (i) all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity; or (ii) if it is infeasible to return or destroy PHI, protections are extended to such information in accordance with the termination provisions in this Section.
- c. Termination for Cause. Upon a material breach of this Agreement, Covered Entity shall provide an opportunity for Business Associate to cure the breach or end the violation. The Covered Entity will have the right to terminate this Agreement and the Covered Agreement if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity (within seven (7) calendar days); or the Covered Entity may immediately terminate this Agreement and the Covered Agreement if the Business Associate has breached a material term of this Agreement and cure is not possible.
- d. Upon Termination.
 - i. Except as provided in paragraph (ii) of this Section, upon termination of this Agreement for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created, maintained or received by Business Associate on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.
 - ii. In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of PHI is infeasible; Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI. The

Parties intend that the provisions of this Section shall survive termination of this Agreement.

7. **Mutual Representations and Warranties of the Parties.** Each Party represents and warrants to the other Party that, where applicable, it is duly organized, validly existing and in good standing under the laws of the jurisdiction in which it is organized; it has the full power to enter into this Agreement and to perform its obligations; that the performance by it of its obligations under this Agreement have been duly authorized by all necessary corporate or other actions and will not violate any provision of any license, corporate charter or bylaws; and that neither the execution of this Agreement, nor its performance hereunder, will directly or indirectly violate or interfere with the terms of another agreement to which it is a party, or give any governmental entity the right to suspend, terminate or modify any of its governmental authorities or assets required for its performance hereunder.
8. **Insurance.** Throughout the term of this Agreement, Business Associate shall maintain general liability insurance sufficient to cover any liabilities arising from Business Associate's indemnification obligation in Section 9 in amounts of at least one million dollars (\$1,000,000) per occurrence and three million dollars (\$3,000,000) in the aggregate. Throughout the term of this Agreement, Covered Entity shall maintain general liability insurance sufficient to cover any liabilities arising from Covered Entity's indemnification obligation in Section 9 in amounts of at least one million dollars per occurrence (\$1,000,000) and three million dollars (\$3,000,000) in the aggregate.
9. **Indemnification.** Covered Entity agrees to hold Business Associate harmless and indemnify Business Associate, its directors, officers, employees, agents, successors, and assigns from and against all claims, losses, costs and expenses, including reasonable attorneys' fees, arising out of or by reason of any damage or injury to persons or property suffered as a result of wrongful acts or omissions of Covered Entity, its directors, officers, employees, agents, and successors. Business Associate agrees to hold Covered Entity harmless and indemnify Covered Entity, its directors, officers, employees, agents, successors, and assigns from and against all claims, losses, costs and expenses, including reasonable attorneys' fees, arising out of or by reason of any damage or injury to persons or property suffered as a result of wrongful acts or omissions of Business Associate, its directors, officers, employees, agents, and successors.
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 conflicts of laws principles thereof.
11. **Notices.** All demands, notices, requests and other communications hereunder must be in writing and will be deemed to have been duly given only if delivered personally or by registered or certified mail, return receipt requested, to the Parties, at the following addresses:

if to Covered Entity, addressed to:

CentraCare Health
Attn: Legal Department
1406 6th Avenue North
St. Cloud, MN 56303

if to Business Associate, addressed to:

Or to such other address as Party hereto will specify to the other Party hereto in writing in a notice which complies with this Section. Any party may give any notice using other means (including personal delivery, expedited courier, messenger service, telecopy, telex, ordinary mail or electronic mail), but no such notice shall be deemed to have been duly given unless and until it is actually received by the intended recipient.

12. **Amendment and Modification.** No part of this Agreement may be amended, modified, supplemented in any manner whatsoever except by a written document signed by the Parties' authorized representatives. The Parties agree to take action to amend this Agreement from time to time as necessary for Covered Entity to comply with requirements of the Privacy Rule and HIPAA.
13. **Headings.** The headings used in this Agreement have been inserted for convenience of reference only and do not define or limit the provisions hereof.
14. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. Faxed signatures shall be treated as effective as original signatures.
15. **No Third Party Beneficiaries.** Nothing expressed or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the Parties and the respective successors or assigns of the Parties, any rights, remedies, obligations or liabilities whatsoever.
16. **Disputes.** If any controversy, dispute or claim arises between the Parties with respect to this Agreement, the Parties shall make good faith efforts to resolve such matters informally.
17. **No Partnership, Joint Venture, or Fiduciary Relationship Created Hereby.** This Agreement does not constitute a joint venture or partnership arrangement between the Parties and it does not create any relationship of principal and agent, or otherwise between the Parties. Neither Party shall be liable for any obligation incurred by the other, except as might otherwise be expressly provided within this Agreement. All employees of each Party shall remain the employee of that Party, and shall not be subject to any direction or control by the other Party. Nothing contained in this Agreement shall be interpreted as creating a partnership, joint venture or employment relationship of the Parties, it being understood that the sole relationship created hereby is one of independent contractor.
18. **Failure to Enforce Not a Waiver.** The failure of either Party to enforce at any time any provision of this Agreement shall in no way be construed to be a waiver of such provision or of any other provision hereof.
19. **Successors and Assigns.** The Business Associate's rights and duties under this Agreement are personal to Business Associate and no such right or duty shall be subject to voluntary or involuntary assignment or transfer unless otherwise agreed to in writing by Client.

20. **Entire Agreement.** This Agreement constitutes the entire agreement of the Parties with respect to the subject matter hereof and supersedes all prior understandings or agreements, written or oral, with respect to the rights and responsibilities of the Parties set forth in this Agreement.
21. **Effect on other Agreements.** Except as it relates to the use, security and disclosure of PHI and electronic transactions, this Agreement is not intended to change the terms and conditions of, or the rights and obligations of the Parties under, the any other Agreement between the Parties. In the event of any conflict or inconsistency between the provisions of this Agreement and another agreement between the Parties, with respect to HIPAA compliance, the provisions of this Agreement shall control unless the Parties specifically agree to the contrary in writing.
22. **Interpretation.** A reference in this Agreement to a section in the Privacy Rule or Security Rule means the section as amended from time to time. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity and Business Associate to comply with the HIPAA Privacy Rule and the Security Rule.

IN WITNESS WHEREOF, each of the undersigned authorized representatives has caused this Agreement to be duly executed in its name and on its behalf to be effective as of the _____, 2019 (“Effective Date”).

COVERED ENTITY

CentraCare Health

By _____
Its _____

BUSINESS ASSOCIATE

By _____
Its _____