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BUSINESS ASSOCIATE AGREEMENT

THIS BUSINESS ASSOCIATE AGREEMENT ("Agreement") amends and is made a part of all Services Agreement(s) (as defined below) between St. Luke's Methodist Hospital ("Covered Entity") and Hiawatha Fire Department ("Business Associate"). This Agreement is effective _____, 2016.

1. **Definitions**. Terms used but not otherwise defined in this Agreement shall have the meaning ascribed in section 160.103, 164.501, or elsewhere, in the Regulations.

a. "***ePHI***" means PHI that is maintained or transmitted in electronic media.

b. "***Breach***" means, with respect to PHI, the impermissible acquisition, access, use or disclosure of Unsecured PHI which compromises the security or privacy of the PHI.

c. ***"Business Associate Functions"*** means all functions performed by Business Associate under one or more Service Agreements on behalf of Covered Entity which involve the creation, receipt, transmission or maintenance of PHI by Business Associate on behalf of Covered Entity by Business Associate or its agents or subcontractors.

d. ***"HIPAA"*** means the administrative simplification provisions of the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. §§ 1320d to 1320d-7, and future amendments thereto and the Regulations issued thereunder.

e. ***"PHI"*** means protected health information as defined in the Regulations, which is created, obtained or used by Business Associate in the performance of one or more Business Associate Functions for Covered Entity.

f. ***"Regulations"*** means the final Regulations implementing the provisions of HIPAA as amended from time to time. The Regulations are presently codified at 45 C.F.R. Parts 160 and 164.

g. ***"Services Agreement(s)"*** or ***"Agreement"*** means all agreements, whether written or oral, and whether now in effect or hereafter entered into, between Covered Entity and Business Associate for the performance of Business Associate Functions by Business Associate.

h. "***Security Incident***" means the attempted or successful unauthorized access, use, disclosure, modification or destruction of information or interference with system operations in an information system.

i. "***Unsecured PHI***" means PHI that has not been rendered unusable, unreadable, or indecipherable to unauthorized individuals by one or more of the methods outlined by the Department of Health and Human Services in 74 Fed. Reg. 70 (2009) (to be codified at 45 C.F.R. §160 and §164).

2. **Purpose**. St. Luke's Methodist Hospital is a Covered Entity under HIPAA and Hiawatha Fire Department is its Business Associate. HIPAA requires Covered Entity to obtain satisfactory written contractual assurances from its business associates before furnishing them with PHI or permitting them to obtain or create PHI to perform Business Associate Functions. This Agreement is entered into to provide Covered Entity with the contractual assurances required under HIPAA.

3. **Permitted Uses and Disclosures of PHI**. Business Associate shall only use and disclose PHI as permitted or required under this Agreement or as required by law, but shall not otherwise use or disclose any PHI. Business Associate shall not, and shall ensure that its employees, other agents and contractors do not, use or disclose PHI received from Covered Entity in any manner that would constitute a violation of HIPAA or state privacy law if used or disclosed by Covered Entity. To the extent Business Associate carries out any of Covered Entity's obligations under HIPAA, Business Associate shall comply with the requirements of HIPAA that apply to Covered Entity in the performance of such obligations. Without limiting the generality of the foregoing, Business Associate is permitted to use or disclose PHI as set forth below:

a. Business Associate may use PHI to perform Business Associate Functions.

b. Business Associate may use PHI as needed for the proper management and administration of Business Associate and to carry out the legal responsibilities of Business Associate.

4. **Special Conditions on Disclosure for Business Associate's Purposes**. Before Business Associate may *disclose* PHI to another party for a reason described in subparagraph 3b, one of the following two conditions must be met; either –

a. the disclosure must be *required by law*, or

b. Business Associate must obtain *reasonable assurances* from the person to whom the PHI is disclosed that such person will safeguard the PHI and further use and disclose it only as required by law or for the purpose for which Business Associate disclosed it to such person; and such person must agree in writing to notify Business Associate of any instances of which it is aware in which the confidentiality of the PHI has been breached.

5. **Privacy Assurances of Business Associate**. As an express condition of performing Business Associate Functions, Business Associate agrees to the following terms and conditions:

a. **Compliance with Law.** Business Associate shall comply with the requirements of Title XIII, Subtitle D of the Health Information Technology for Economic and Clinical Health (HITECH) Act, codified at 42 U.S.C. §§ 17921-17954, which are applicable to Business Associates, and comply with all regulations issued by the Department of Health and Human Services (HHS) to implement HITECH, as of the date by which Business Associate is required to comply with HITECH and the related regulations. Such requirements are hereby incorporated by reference into this Business Associate Agreement.

b. **Uses and Disclosures.** Business Associate shall use and disclose PHI only as permitted or required by this Agreement, or as otherwise required by law. Business Associate shall not use or disclose information in a manner that would violate any applicable law if done by Covered Entity.

c. **Safeguards.** Business Associate shall use appropriate safeguards to prevent use or disclosure of PHI other than as provided for in this Agreement. In addition, Business Associate shall implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of ePHI that it creates, receives, maintains or transmits on behalf of Covered Entity. Business Associate shall comply with the HIPAA Security Rule with respect to ePHI.

d. **Breach Reporting and Notification.** Business Associate shall:

i. Report to Covered Entity's designated privacy official, without unreasonable delay, but in no event later than five (5) business days of discovery by Business Associate, any acquisition, access, use or disclosure of PHI not provided for in this Agreement or not permitted under the Regulations, including any impermissible access, acquisition, use or disclosure that is a Breach of Unsecured PHI, by Business Associate, its employees, other agents or contractors or by a third party to which Business Associate disclosed PHI (each an "Unauthorized Use or Disclosure"), including any impermissible access, acquisition, use or disclosure that is a Breach of Unsecured PHI, together with any remedial or mitigating action taken or proposed to be taken with respect thereto.

ii. Conduct a risk assessment with respect to any impermissible access, acquisition, use or disclosure to determine if there is a low probability that the PHI has been compromised. Business Associate shall notify Covered Entity of any such impermissible access, acquisition, use or disclosure, including the following information in such notice:

a) A brief description of how the impermissible access, acquisition, use or disclosure occurred and how and when it was discovered.

b) A description of whether Unsecured PHI was involved in the impermissible access, acquisition, use or disclosure, and the results of Business Associate's risk assessment.

c) The steps Business Associate is taking to further investigate the Unauthorized Use or Disclosure, to mitigate losses, and to protect against further impermissible access, acquisition, use or disclosure.

In addition, Business Associate shall cooperate with Covered Entity in making any required notification to individuals in the case of a Breach as determined by Covered Entity. Business Associate shall reimburse Covered Entity for all costs, expenses, damages and other losses resulting from any breach of this Agreement, Unauthorized Use or Disclosure, Security Incident or Breach involving PHI maintained by Business Associate, including, without limitation: fines or settlement amounts owed to a state or federal government agency; the cost of any notifications to Individuals or government agencies; credit monitoring for affected individuals for a one year period (if reasonable and appropriate under the circumstances); or other mitigation steps taken by Covered Entity to comply with HIPAA or state law.

e. **Mitigation**. Business Associate shall cooperate with Covered Entity in taking reasonable steps to mitigate, to the extent practicable, any harmful effects of any impermissible access, acquisition, use or disclosure of PHI in violation of this Agreement or HIPAA.

f. **Subcontractors and Agents.** Business Associate shall enter into a written agreement meeting the requirements of 45 C.F.R. §§ 164.504(e) and 164.314(a)(2) with each subcontractor (including, without limitation, a subcontractor that is an agent under applicable law) that creates, receives, maintains or transmits PHI on behalf of Business Associate. Business Associate shall ensure that the written agreement with each

subcontractor obligates the subcontractor to comply with restrictions and conditions that are at least as restrictive as the restrictions and conditions that apply to Business Associate under this Agreement.

g. **Individual Access to PHI.** Within ten (10) business days of a request by Covered Entity for access to PHI about an individual contained in any Designated Record Set of Covered Entity maintained by Business Associate, Business Associate shall make available to Covered Entity such PHI for so long as Business Associate maintains such information in the Designated Record Set. If Business Associate receives a request for access to PHI directly from an individual, Business Associate shall forward such request to Covered Entity within five (5) business days.

h. **Availability of PHI for Amendment.** Business Associate shall notify Covered Entity within five (5) business days of any request by individuals to amend PHI maintained by Business Associate in designated record sets, direct the requesting individual to Covered Entity for handling of such request, cooperate with Covered Entity in the handling of such request, and incorporate any amendment accepted by Covered Entity in accordance with §164.526 of the Regulations. Business Associate is not authorized to independently agree to any amendment of PHI.

i. **Accounting of Disclosures**. Business Associate shall maintain a record of those disclosures of PHI by Business Associate or its agents or subcontractors which are subject to the individual's right to an accounting under § 164.528 of the Regulations and report such disclosures to Covered Entity within five (5) business days of request by Covered Entity in a form permitting Covered Entity to respond to an individual's request for an accounting.

j. **Availability of Books and Records.** Business Associate shall make its internal practices, books and records relating to the use and/or disclosure of PHI available to the Secretary of HHS or his or her designees for purposes of determining Covered Entity's compliance with the Regulations.

k. **Return or Destruction of PHI upon Termination.** Business Associate shall return to Covered Entity or destroy (and not retain a copy) all PHI in its possession, upon the termination of the Services Agreement or as soon as such PHI is no longer needed by Business Associate to perform its responsibilities hereunder, whichever comes first, and require its agents and subcontractors to do likewise. To the extent that return or destruction is not feasible, the protections of this Agreement shall remain in effect for so long as Business Associate or its agents or subcontractors have possession of or access to such PHI, and Business Associate agrees to limit further uses and disclosures of the PHI to those purposes which make return or destruction infeasible.

l. **Restrictions.** Business Associate shall comply with any reasonable voluntary restriction on use or disclosure of PHI accepted by Covered Entity under § 164.522(a) of the Regulations which is properly communicated to Business Associate, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

m. **Limitations in Notice of Privacy Practices.** Business Associate shall comply with any reasonable limitation in Covered Entity's notice of privacy practices to the extent that such limitation may affect Business Associate's use or disclosure of PHI.

n. **Alternative Communication Requests from Individuals.** Business Associate shall comply with any reasonable requests by individuals under § 164 522(b) of the Regulations to receive communications of PHI by alternative means or at alternate locations when communicated to Business Associate by Covered Entity or directly by the individual.

o. **Minimum Necessary Standard.** Business Associate shall limit the request for, and use and disclosure of, PHI for purposes described in this Agreement to the minimum necessary to perform the required function. Business Associate shall comply with any additional requirements for the determination of minimum necessary as are required from time to time by the Regulations, as amended.

6. **Responsibilities of Covered Entity**. Covered Entity agrees to:

a. Notify Business Associate promptly if Covered Entity agrees to any voluntary restrictions on the use or disclosure of PHI which will affect Business Associate's use or disclosure of PHI under the Services Agreement.

b. Notify Business Associate of any reasonable requests by individuals under §164 522(b) of the Regulations to receive communications of PHI by alternative means or at alternative locations, if such requests will affect Business Associate's services.

c. Provide Business Associate with a copy of any amendment to PHI which is accepted by Covered Entity under §164.526 of the Regulations which Covered Entity believes will apply to PHI maintained by Business Associate in designated record sets.

7. **Supervening Law**. Upon the enactment of any law or regulation affecting the use or disclosure of PHI, or the publication of any decision of a court of the United States or of this state relating to any such law, or the publication of any interpretive policy or opinion of any governmental agency charged with the enforcement of any such law or regulation, Covered Entity may, by written notice to Business Associate, amend this Agreement in such manner as it determines necessary to comply with such law or regulation. If Business Associate disagrees with any such amendment, it shall so notify Covered Entity in writing within thirty (30) days of Covered Entity's notice. If the parties are unable to agree on an amendment within thirty (30) days thereafter, either party may terminate the Services Agreement on not less than thirty (30) days' written notice to the other. If not so terminated, the amendment or amendments proposed by Covered Entity shall become effective.

8. **Term and Termination**.

a. **Term**. This Agreement shall become effective on the Effective Date and shall continue in effect until all obligations of the parties have been met, including return or destruction of all PHI in Business Associate's possession (or in the possession of Business Associate's agents and subcontractors), unless sooner terminated as provided herein. It is expressly agreed that the terms and conditions of this Agreement designed to safeguard PHI shall survive expiration or other termination of the Services Agreement and shall continue in effect until Business Associate has performed all obligations under this Agreement.

b. **Termination by Covered Entity**. Any other provision of the Services Agreement(s) notwithstanding, Covered Entity may terminate the Services Agreements and this Business Associate Agreement upon thirty (30) days advance written notice to

Business Associate in the event that Business Associate breaches a material term of this Agreement and such breach is not cured to the reasonable satisfaction of Covered Entity within a thirty (30) day period. Failure to take reasonable steps to cure the breach is grounds for the immediate termination of this Agreement.

c. **Termination by Business Associate**. If Business Associate determines that Covered Entity has breached a material term of this Agreement, Business Associate shall notify Covered Entity and provide Covered Entity an opportunity to cure the alleged material breach upon mutually agreeable terms. Failure of Covered Entity to take reasonable steps to cure the breach is grounds for the immediate termination of this Agreement.

d. **Return/Destruction Infeasible**. Upon expiration or earlier termination of the Services Agreement(s) or this Business Associate Agreement, business Associate shall either return or destroy all PHI received from Covered Entity or created or received by Business Associate on behalf of Covered Entity and which the Business Associate still maintains in any form. Notwithstanding the foregoing, 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.

9. **Miscellaneous**.

a. **Covered Entity**. For purposes of this Agreement, and as applicable to the Business Associate Functions of Business Associate under all Services Agreements covered by this Agreement, references to Covered Entity shall include the named Covered Entity and all other entities covered by a joint Notice of Privacy Practices with Covered Entity, whether as part of an affiliated covered entity or an organized health care arrangement.

b. **Survival**. The respective rights and obligations of Business Associate and Covered Entity hereunder shall survive termination of this Agreement according to the terms hereof and the obligations imposed on Covered Entity under HIPAA.

c. **Interpretation; Amendment**. This Agreement shall be interpreted and applied in a manner consistent with Covered Entity's obligations under HIPAA. All amendments shall be in writing and signed by both parties, except that this Agreement shall attach to additional Services Agreements entered into between the parties in the future without the necessity of amending this Agreement each time. This Agreement is intended to cover the entire Business Associate *relationship* between the parties, as amended, from time to time, through Services Agreements or other means.

d. **Waiver**. A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of any right or remedy as to subsequent events.

e. **No Third-Party Beneficiaries**. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the parties and their respective successors or assigns, any rights, remedies or obligations.

f. **Effect**. The provisions of this Agreement shall control with respect to Protected Health Information Business Associate receives from or on behalf of Covered Entity, and the terms and provisions of this Agreement shall supersede any conflicting or inconsistent terms and provisions of the Services Agreement, including all exhibits or other attachments thereto and all documents incorporated therein by reference, to the extent of such conflict or inconsistency. This Agreement shall not modify or supersede any other provision of the Services Agreement.

g. **Counterparts.** This Agreement may be executed in two counterparts, each of which shall be deemed to be an original but both of which together shall constitute one and the same instrument. Copies of signatures sent by facsimile transmission or scanned and sent by email are deemed to be originals for purposes of execution and proof of this Agreement.

IN WITNESS WHEREOF, each of the undersigned has caused this Agreement to be duly executed in its name and on its behalf.

St. Luke's Methodist Hospital	**Hiawatha Fire Department**
By: [signature]	By: _____
Print Name: Dave Phillips, MSN, RN	Print Name: _____
Print Title: Privacy Officer	Print Title: _____
Date: 8-23-16	Date: _____

DRAFT

RESOLUTION NO. 18-
City Council

RESOLUTION APPROVING AND AUTHORIZING EXECUTION OF A BUSINESS ASSOCIATE AGREEMENT BETWEEN THE HIAWATHA FIRE DEPARTMENT AND ST. LUKE'S METHODIST HOSPITAL

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF HIAWATHA, IOWA, that the Mayor is hereby authorized to sign the Business Associate Agreement between the Hiawatha Fire Department and St. Luke's Methodist Hospital for the purpose of ensuring HIPAA compliance in providing community paramedicine services (see attached agreement Exhibit A).

AYES:
NAYS:
ABSENT:

PASSED AND APPROVED this 7th day of March, 2018.

_____
Bill Bennett, Mayor

ATTEST:

_____
Kelly Kornegor, City Clerk