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**CYNCEALTH IOWA  
DATA SHARING PARTICIPATION AGREEMENT**

## Contents

<b>1. Definitions</b>	3
<b>2. Grant of Rights to Use Services</b>	5
<b>3. Access to the System</b>	6
<b>4. Making Information Available through the System</b>	10
<b>5. Individual HIE Opt-Out Right</b>	12
<b>6. Hardware and Software</b>	13
<b>7. Governing Principals and Policies</b>	13
<b>8. Training Costs</b>	13
<b>9. Fees and Charges</b>	13
<b>10. Confidential and Proprietary Information</b>	14
<b>11. Warranty Disclaimer and Limitation of Liability, Indemnity</b>	15
<b>12. Insurance</b>	17
<b>13. Term; Modification, Suspension; Termination</b>	17
<b>14. Applicable Law</b>	18
<b>15. Dispute Resolution</b>	18
<b>16. No Assignment</b>	19
<b>17. Force Majeure</b>	19
<b>18. Severability</b>	19
<b>19. Notices</b>	19
<b>20. Waiver</b>	19
<b>21. No Third-Party Beneficiaries</b>	19
<b>22. Independent Contractors</b>	19
<b>23. No Medicare Exclusion</b>	19
<b>24. No Offshoring</b>	20
<b>25. Signature Authority</b>	20
<b>26. Complete Understanding</b>	20
<b>Attachment 1: Services</b>	21
<b>Attachment 2: System</b>	22
<b>Attachment 3: eHealth Exchange DURSA Mandated Flow-Down Provisions</b>	23
<b>Attachment 4: Unite Us Platform</b>	25
<b>Attachment 5: Fees</b>	27
<b>Attachment 5: Encryption for HITRUST-certified Environments</b>	28
<b>Attachment 6: Business Associate Agreement</b>	29

## **DATA SHARING PARTICIPATION AGREEMENT**

THIS DATA SHARING PARTICIPATION AGREEMENT is entered into by and between the Iowa Health Information Network dba CyncHealth, an Iowa not-for-profit corporation (“CyncHealth”), and the undersigned participant (“Participant”) (collectively, the “Parties”), as of the date of the last signature to this Agreement (“Effective Date”) set forth below.

### **RECITALS**

WHEREAS, CyncHealth is a not-for-profit corporation organized to improve the quality, safety, and timeliness of health services, reduce medical and prescription errors, and reduce health care costs by facilitating the exchange of health information in a manner that complies with all Applicable Laws and regulations, including, without limitation, those protecting the privacy and security of personal health information;

WHEREAS, CyncHealth has been designated by the State of Iowa to operate a health information exchange for use by health care providers, health care payors, other covered entities, and other qualified entities to whom CyncHealth grants access in accordance with its policies and the law;

WHEREAS, CyncHealth is a private-public partnership that provides data and interoperability solutions for providers, payers, patients and public health; and,

WHEREAS, Participant desires to have access to CyncHealth’s System and Services;

NOW, THEREFORE, in consideration of the mutual promises set forth in this Agreement, and other good and valuable consideration, the delivery and sufficiency of which is acknowledged, the Parties agree as follows:

**1. Definitions.** Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in 45 CFR §§ 160.103 and 164.501.

“Affiliate” means any affiliates of CyncHealth, including Nebraska Health Information Initiative, Inc., dba CyncHealth (“CyncHealth”), Iowa Health Information Network dba CyncHealth Iowa, CyncHealth Shared Services, the Nebraska Healthcare Collaborative, Inc., and any entity that is directly or indirectly controlled by, under common control with or in control of CyncHealth.

“Agreement” means this Participation Agreement, as well as any Attachment or Addendum, as all may be amended from time to time.

"Applicable Law" means any and all applicable federal, state, local, common law, rules, regulations, directives and guidelines, including but not limited to HIPAA, which shall include the administrative simplification provisions of the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. §§ 1320d to 1320d-7, and as amended by the HITECH Act, the regulations promulgated thereunder, including the Privacy Rule and the Security Rule, and all future changes or amendments to HIPAA or the regulations promulgated thereunder.

“Authorized Users” means those members of Participant’s workforce (including employees, agents, contractors and any other persons having access to the System by virtue of their relationship with Participant) who are individually authorized by Participant or CyncHealth to have access rights to the System to assist Participant in providing treatment, obtaining payment

for treatment, or conducting other permitted uses, and for whom a unique User ID has been assigned by Participant or CyncHealth.

“Breach” means a breach as defined in 45 C.F.R. § 164.402.

“Confidential Information” means, with respect to each party, any information concerning such party’s business, financial affairs, current or future products or technology, trade secrets, workforce, customers, or any other information that is treated or designated by such party as confidential or proprietary, or would reasonably be viewed as confidential or as having value to a competitor of such party. Confidential Information shall not include information that such party makes publicly available or that becomes known to the general public other than as a result of a breach of an obligation by the other party. Confidential Information does not include individuals’ health information.

“Electronic Health Information” or “Health Information” means electronic protected health information as defined in 45 CFR 160.103 to the extent that it would be included in a designated record set as defined in 45 CFR 164.501, regardless of whether the group of records are used or maintained by or for a covered entity as defined in 45 CFR 160.103, but shall not include (1) psychotherapy notes as defined in 45 CFR 164.501; or (2) information compiled in reasonable anticipation of, or for use in, a civil, criminal, or administrative action or proceeding.

“Governing Principals and Policies” means CyncHealth’s rules, regulations, policies and procedures for access to and use of the System, including requirements related to the granting of User IDs and appropriate levels of System access to Authorized Users by the respective Participants, as from time to time posted electronically on the System or otherwise posted on the CyncHealth website.

“Intellectual Property Rights” means patent rights, copyrights, trade secrets, and any other intellectual property rights recognized in any country or jurisdiction in the world.

“Individual” means a natural person or, if appropriate in the context in which it occurs, the Individual’s legal representative, authorized to act for the Individual under Applicable Law for matters relating to Health Information.

“Master Patient Index” or “MPI” shall mean an electronic database that maintains a unique index (or identifier) for every Individual who has been, or who during the term of the Agreement becomes, registered as a patient at Participant or at any other participant, whether or not the Individual has Opted-Out as specified in the Agreement.

“Participant’s Shared Information” means health information Participant shares with CyncHealth through the System.

“Public Health Activities” means actions undertaken by the Iowa Department of Health and Human Services in its capacity as a public health authority under HIPAA and/or as required or permitted by other federal or state law. Public Health Activities includes sharing Participant’s Shared Information for public health purposes, including, but not limited to, immunizations, electronic lab results (ELR), syndromic surveillance, and public health registries.

“Public Purpose” is a disclosure of Health Information to public health officials, government agencies or emergency medical services and others when required by Applicable Law or when permitted by Applicable Law and consistent with the mission of CyncHealth to advance the health and wellness of patients by deploying health information technology solutions adopted

through cooperation and collaboration and to enable the healthcare community to appropriately and securely share data, facilitate and integrate care, create efficiencies, and improve outcomes, provided that any disclosure of Health Information that is permitted, rather than required, by Applicable Law to a recipient other than public health officials, government agencies or emergency medical services shall not be a Public Purpose unless it is approved by the CyncHealth Data Governance Committee.

“Privacy Rule” means the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, subparts A and E.

“Regulations” means the final Regulations implementing the privacy and security provisions of HIPAA as amended from time to time. The Regulations are presently codified at 45 C.F.R. Parts 160, 162, and 164.

“Security Incident” means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information while in transit via the System, or while being stored within CyncHealth systems, or interference with CyncHealth operations.

“Security Rule” means the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR part 160 and part 164, subparts A and C.

“Services” means the type of data transactions facilitated through CyncHealth and the interoperability solutions offered to Participants as outlined in any Attachment to this Agreement.

“System” means the network of CyncHealth, in its role as Iowa’s designated health information network, as provided in Iowa Code Chapter 135.D.

“Term” means the initial term and all renewal terms of this Agreement.

“User ID” means a unique user identifier assigned to an individual.

## **2. Grant of Rights to Use Services**

2.1 Access. During the Term, CyncHealth grants to Participant and Participant accepts a non-exclusive, non-transferable (except as provided herein) right to access and use the System and any related software. Such access and use are subject to Participant’s compliance with all Applicable Laws and regulations, the terms and conditions set forth in this Agreement, and the Governing Principals and Policies.

2.2 Restrictions. Participant shall obtain no rights to the System except for the limited rights to use the System expressly granted by this Agreement. Participant shall not:

- a. Make the System or Services, in whole or in part, available to any other person, entity or business other than as set forth in this Agreement;
- b. Copy, reverse engineer, decompile or disassemble the System, in whole or in part, or otherwise attempt to discover the source code to the software used in System;
- c. Modify the System or combine the System with any other software or services not provided or approved by CyncHealth;
- d. Modify any security procedures for security software of or for the System; or,
- e. Use any part of the System to build a product or service which competes with the System.

2.3 Change and Termination. CyncHealth reserves the right to change the System, Services, or standards for connectivity and/or end-user equipment, or to cease operating the System or any

or all Services, at any time. Changes to the System or the Services that reduce or limit the functionality or levels of service provided shall not be made less than sixty (60) days prior notice to Participant, unless circumstances beyond CyncHealth's control require it.

### **3. Access to the System**

3.1 Permitted Uses. Subject to the terms of this Agreement, CyncHealth authorizes Participant and its Authorized Users to access the System and to use the Services only as authorized in this Agreement.

3.2 Prohibited Uses. Participant shall maintain all systems, system components, system applications, and networks in compliance with all HITRUST security requirements when connecting, sending, receiving, transferring, or otherwise interacting with the System. In particular:

- a. Participant shall not reproduce, publish or distribute content in connection with the System that infringes any third party's trademark, copyright, patent, trade secret, publicity, privacy or other personal or proprietary right;
- b. Participant shall be responsible for its own compliance with all Applicable Laws, including laws related to maintenance of privacy, security, and confidentiality of patient and other health information and the prohibition on the use of telecommunications facilities to transmit illegal, obscene, threatening, libelous, harassing or offensive messages or otherwise unlawful material;
- c. Participant shall permit CyncHealth to audit Participant's use of the System in order to establish whether the System is being used in accordance with this Agreement;
- d. Participant shall not:
  - i. abuse or misuse the System or the Services, including gaining or attempting to gain unauthorized access to the System or altering or destroying information in the System, except in accordance with the Governing Principals and Policies;
  - ii. grant access to a user, or provide a user with a level of access to the System, that is not permitted in compliance with Applicable Law and the Governing Principals and Policies regarding access to protected health information;
  - iii. use the System or Services in such a manner that interferes with other Participant's use of the System or Services; or,
  - iv. permit the introduction into the System of any program, routine or data (such as viruses or worms) that does or may disrupt or in any way impede the operation of the System or alter or destroy any data within it.
  - v. use the System or Services for the purpose of exploiting the health data of other participants for Participant's own personal gain or commercial purposes, including aggregating health data from other participants for commercial use or exploitation by third parties;
  - vi. use clinical data for underwriting except as permitted in accordance with HIPAA and with all applicable required authorizations; or,
  - vii. extract any Electronic Health Information contained within the System for distribution to a third party consistent with the Making Information Available through the System Section of this Agreement.
- e. Data Aggregation and Subpoenas:
  - i. Participant shall not use the System to create, produce or compile records or health data of other participants for the purpose of furnishing copies of aggregated records to third parties, except as may be medically useful to healthcare providers in the provision of medical care or treatment to an individual patient of the provider, or as is otherwise permissible under this Agreement or as required by law.

- ii. If Participant is subpoenaed or otherwise ordered to use the System for the purpose of compiling the data of other participants that are not already contained in Participant's records, Participant shall immediately notify CyncHealth so that CyncHealth and such other interested parties as it may determine might have an opportunity to appear or intervene and protect their respective interest. Neither CyncHealth nor Participant shall be required to contest any such subpoena or order, nor incur any expense in connection with legal proceedings or processes, whether initiated by CyncHealth or any other interested party, with respect thereto.
- f. Participant's Records.
  - i. Participant shall be solely responsible for compliance with any applicable regulatory requirements related to the preservation, privacy and security of its own records, including, without limitation, data backup, disaster recovery, and emergency mode operation. Participant acknowledges that CyncHealth does not undertake to provide such services as part of this Agreement.
  - ii. Participant may access and use the Electronic Health Information as permitted in this Agreement and may merge relevant parts of such electronic health information into its own.
  - iii. Nothing in this Section or elsewhere in this Participation Agreement is intended or shall be deemed to limit the Participant's use of its own patient information in any way.

### 3.3 Participant's Own Systems.

- a. Participant shall be responsible for its compliance with any applicable regulatory requirements related to the preservation, privacy, and security of its own records, including without limitation data backup, disaster recovery, and emergency mode operation, and acknowledges that CyncHealth does not provide such services as part of this Agreement.
- b. Participant may access and use the Electronic Health Information as permitted in this Agreement and may merge relevant parts of such Electronic Health Information into its own, in which case such merged data becomes the property of Participant to the extent thus incorporated into its record.
- c. HITRUST, if applicable.
  - i. Participant shall use cryptographic controls during transmission, storage, transformation, and rest of data when exchanging data between Participant and CyncHealth.
  - ii. Participant shall ensure proper authentication controls are enabled to prevent unauthorized access to confidential or covered information.
  - iii. Participant shall ensure encryption on its system, devices, and networks is at a minimum, compliant with all state and federal regulations.

### 3.4 Privacy and Security Safeguards.

- a. Participant and CyncHealth shall implement and maintain reasonable and appropriate administrative, physical, and technical safeguards to protect the confidentiality, privacy, security, integrity and availability of Electronic Health Information accessible through the System, to protect it against reasonably anticipated threats or hazards, and to prevent its use or disclosure otherwise than as permitted by this Agreement or required by law. Such safeguards shall comply with all Applicable Law and CyncHealth Governing Principals and Policies.

- b. Each party shall notify the other of any Security Incident relating to the System of which either Party becomes aware, any unauthorized use or disclosure of information within or obtained from the System, any inappropriate grant of access or assignment of access rights to Participant's Authorized Users, or any abuse of access of access rights by any users of the System in accordance with the incorporated Business Associate Agreement, and shall cooperate with the other party in investigating the incident and shall take such action to mitigate any breach or suspected breach.
- c. Participant, on an annual basis, may request from CyncHealth copies of CyncHealth's most recent HITRUST and SOC2 security certifications to fulfill Participant security assessment obligations.

3.5 Compliance. Participant and CyncHealth, respectively, are responsible for their own compliance with the terms of this Agreement, the Governing Principals and Policies, and any Applicable Law and regulations. Participant shall be solely responsible for the use of the System by Participant and Participant's workforce, or any business associate or contractor of Participant, who accesses and uses the System or Services as Authorized Users on its behalf, as well as the efficacy and appropriateness of granting access and access rights to Participant's Authorized Users as defined in this Agreement.

### 3.6 Authorized Use.

- a. CyncHealth authorizes Participant and Participants' Authorized Users to access and use the System with a unique User ID as assigned by Participant or CyncHealth. Participant shall adopt and maintain reasonable security precautions for Participant's and its Authorized Users' IDs to prevent the disclosure to or use of User IDs by unauthorized persons.
- b. Participant may permit Participant's Authorized Users to access and use the System and the Services on behalf of Participant, subject to the terms of this Agreement. The authority to grant use rights in the System does not convey any ownership rights in the System or Services to the Participant. CyncHealth may revoke or restrict assigned User IDs or use rights granted by Participant in the event CyncHealth determines, in its reasonable discretion, that such User ID has been used to violate the provisions of this Agreement or Applicable Law. Participant shall:
  - i. Provide the appropriate level of access to the System based on the role or function of the Authorized User in Participant's workforce;
  - ii. Require that its Authorized Users agree to the same restrictions and conditions that apply to the Participant with respect to Electronic Health Information;
  - iii. Ensure the process for granting access shall be substantially similar to the process Participant utilizes for its own electronic medical record system. Participant shall ensure that each Authorized User has and uses his, her or their own User ID and Participant shall adopt and maintain reasonable security precautions for User IDs to prevent disclosure to and use by unauthorized persons;
  - iv. Train all Authorized Users regarding the privacy, security and confidentiality requirements of Applicable Law, this Agreement, the Governing Principals and Policies, relating to their access to and use of the System and Services. Participant shall be responsible for their compliance with such requirements;
  - v. Promptly notify CyncHealth of violations of the requirements set forth in this Agreement by Participant's Authorized Users;
  - vi. Take such disciplinary action as it may deem appropriate against any Authorized User who violates the confidentiality provisions of this Agreement or CyncHealth Governing Principals and Policies; and



- vii. Promptly terminate any User ID and associated rights of access assigned to an Authorized User whose employment is terminated (or if the individual is not an employee, upon the termination of the relationship with Participant which permitted the individual to be granted access to the System) in the same manner in which Participant terminates users of its own electronic medical record and information systems under such circumstances. If CyncHealth provisioned Authorized Users, Participant shall promptly notify CyncHealth of the termination, revocation or restriction of employment or right of access of any Authorized User (or if the individual is not an employee, of the termination of the relationship with Participant which granted the individual access to the System);
- viii. Take prompt steps to assure that any Authorized User whose access or access rights in the System have been revoked or restricted by Participant has no further access to protected Health Information through the System; and,
- ix. In the event CyncHealth notifies Participant of a Security Incident or other compliance concern involving an Authorized User, participate fully in any investigation of such Authorized User's access and use as necessary to determine the nature and extent of the Security Incident or compliance concern, and take any mitigating action necessary or otherwise required by CyncHealth to mitigate the effects of such Security Incident or compliance concern, up to and including revoking or restricting the access or access rights of the Authorized User.

### 3.7 Discipline and Termination of Authorized Users.

- a. Participant shall require that all its respective Authorized Users, including workforce, business associates, and contractors, who use or have access to the System and the Services do so only in accordance with Applicable Law, confidentiality obligations herein, and the Governing Principals and Policies, including without limitation, the provisions thereof governing the confidentiality, privacy, and security of Electronic Health Information.
- b. Participant shall take appropriate disciplinary action against any of Participant's Authorized Users who use or access the System or Services in violation of this Agreement, or the Governing Principals and Policies. CyncHealth may require Participant to revoke or restrict the access rights of an Authorized User in the event CyncHealth identifies inappropriate use or access by such Authorized User to the System, Services, or Electronic Health Information within the System which is in violation of Applicable Laws or the Governing Principals and Policies. If Participant fails to do so promptly, then CyncHealth shall consider Participant to be in breach of this Agreement.

3.8 Termination of Participant Access. Following discussion with Participant and a period of thirty (30) days to cure (if such cure is possible) CyncHealth may terminate the Participant's access to the System on a temporary or permanent basis for reasons including, without limitation, adverse audit findings related to Participant's or its Authorized Users' use of the System, breaches of the terms and conditions of this Agreement or CyncHealth Governing Principals and Policies, default in payment of Participation Fees, privacy or security breaches, or failure to take reasonable remedial action when a Breach is discovered, including, without limitation:

- a. failure to cooperate in mitigating damages;
- b. failure to appropriately discipline an Authorized User or other person under the Participant's control for security or privacy violations;
- c. failure to promptly revoke or restrict access rights to the System of an Authorized User when requested by CyncHealth, or
- d. other actions that undermine the confidence of other participants in the effectiveness of System safeguards.

When terminating access, CyncHealth shall provide a written explanation to Participant on the basis of the termination and shall provide support for its action. A permanent termination of access shall be followed by termination of this Agreement. If this Agreement is terminated by CyncHealth pursuant to this subsection, Participant shall not be entitled to a refund of Participation Fees for the unexpired term.

3.9 Professional Responsibility. Participant and Authorized Users shall be solely responsible for the medical, professional, and technical services it provides. CyncHealth makes no representations concerning the completeness, accuracy, or utility of any information in the System, or concerning the qualifications or competence of individuals who placed it there. CyncHealth has no liability for the consequences to Participant, Authorized Users or Participant's patients, or Participant's and Authorized Users' use of the System or the Services.

#### **4. Making Information Available through the System.**

4.1 Purpose of System. The purpose of the System is to facilitate the sharing of patient Electronic Health Information among all Participants.

4.2 Accuracy and Format of Health Information. Participant shall use reasonable efforts to ensure that Participant's Shared Information:

- a. Is current, accurate and (subject to any restrictions imposed by Applicable Law or this Agreement) complete, or if it is incomplete, that the record contains an appropriate indication to that effect; and
- b. Complies with any requirements of CyncHealth, CyncHealth data specifications, and the Governing Principals and Policies as to format or content.

4.3 Use and Disclosure of Participant's Shared Information. Participant authorizes CyncHealth to use and disclose Participant's Shared Information as follows, subject to the recipient's agreement to comply with the Governing Principals and Policies and with Applicable Laws and regulations relating to the use and disclosure of Electronic Health Information, and to the provisions of this Agreement:

- a. CyncHealth may permit access to Participant's Shared Information by other participants for treatment, payment, and healthcare operations. Participant agrees that any disclosure pursuant to this section is a disclosure made by a Participant and not CyncHealth; and,
- b. CyncHealth may use and disclose Participant's Shared Information for the proper management and administration of the System and to carry out CyncHealth's legal responsibilities. CyncHealth may also disclose Participant's Shared Information for such purposes if the disclosure is required by law or for Public Health Activities. Without limiting the foregoing, CyncHealth agrees that any disclosure pursuant to this section is a disclosure made by CyncHealth and not the Participant.
- c. As part of its role in promoting the exchange of information and pursuant to federal programs, including but not limited to, the Trusted Exchange Framework and Common Agreement ("TEFCA"), and in compliance with regulations implementing information blocking, CyncHealth may work with external health information exchanges ("External HIEs").

- i. Subject to approval by the CyncHealth Board of Directors, CyncHealth may enter into agreements with External HIEs for the sharing of data (such as making and responding to queries provided or required) provided that (i) such an agreement is permitted under or is consistent with Applicable Law; (ii) if required by law or in applicable contracts, CyncHealth will provide notice of the material terms and conditions of the participation with the External HIE; (iii) such an agreement requires the External HIE to comply with privacy and security requirements that are the same as, or no less stringent than, the requirements that apply to CyncHealth in this Agreement and the Governing Principles and Policies; and (iv) such an agreement requires the External HIE to maintain insurance coverage of the same types and with minimum limits and standards that are equivalent to, or no less than, those required to be carried by CyncHealth as set forth in the Insurance Section of this Agreement.
- ii. Requirements as to a Participant's use of the HIE in this Agreement shall, unless provided otherwise, also govern the Participant's use of External HIEs with which CyncHealth participates, and participants in an External HIE shall have the same rights as CyncHealth Participants as relates to the use of the System, including access to Electronic Health Information.

#### 4.4 Limited Data Sets and Additional Uses

- a. CyncHealth may create limited data sets from Participant's Shared Information and disclose them for any purpose for which Participant may disclose a limited data set without authorization, and Participant hereby authorizes CyncHealth to enter into data use agreements for the use of limited data sets, in accordance with Applicable Laws and with the Governing Principles and Policies. Upon request, CyncHealth shall provide Participant with report listing recipients of limited data sets utilizing Participant's Shared Information, including the Nebraska Healthcare Collaborative, Inc. (the "Collaborative").
- b. CyncHealth may de-identify Participant's Shared Information and may make the de-identified information available to others, including the Collaborative, in accordance with the Governing Principles and Policies, any applicable terms and conditions of this Agreement, and Applicable Law.
- c. CyncHealth and its Affiliates, including the Collaborative, may use Participant's Shared Information to provide data aggregation services relating to Participant's and other users' health care operations in accordance with the Governing Principles and Policies, any applicable terms and conditions of this Agreement, and Applicable Laws.

4.5 Public Health Reporting. CyncHealth may share Participant's Shared Information for Public Health Activities or for Public Purposes, including but not limited to, immunizations, electronic lab results (ELR), syndromic surveillance, and public health registries.

4.6 Reliance on Representations. Participant acknowledges that in granting access to the System for the purposes as set forth in this Agreement, CyncHealth will rely on the assurances of all other Participants as to (i) their identity and credentials, (ii) the purposes for which they are accessing the System, and (iii) the nature and extent of the information to which they will have access. Participant acknowledges that, while CyncHealth will contain certain technical safeguards against misuse of the System, it will rely to a substantial extent on the representations and undertakings of other Participants and their Authorized Users. Participant agrees that CyncHealth shall not be responsible for any unlawful access to or use of Participant's Shared Protected Health Information by any other Participants resulting from misrepresentation to

CyncHealth, breach of their participation agreements, or violation of CyncHealth Governing Principles and Policies, unless such unlawful access to or use of Participant's Shared Information is due to CyncHealth's or its agent's gross negligence, recklessness, or willful misconduct or omission.

4.7 Individual Rights. In compliance with Applicable Law, Participant and CyncHealth are responsible for affording Individuals their rights with respect to Participant's Shared Information, such as the rights of access in compliance with Applicable Law. CyncHealth may provide an individual their Electronic Health Information in compliance with Applicable Law and CyncHealth's Governing Principles and Policies. CyncHealth shall not accept or process any requests made directly from Individuals for special restrictions on the use or disclosure of Health Information or to amend or change patient records.

4.8 Rights in Data. As between CyncHealth and Participant, all Participant Shared Information shall be deemed to be the exclusive property of Participant. In no event shall CyncHealth claim any rights with respect to the Participant Shared Information, use or authorize any third-party to use such data, or take any action with respect to such data that is inconsistent with this Agreement. CyncHealth hereby waives any and all statutory or common law liens it may now or hereafter have with respect to such Participant Shared Information. Participant may retrieve, transport, and deliver to Participant's Electronic Health Record vendor, its workflow integration vendor (if applicable), the Participant Shared Information, and all manipulations of such data associated with the System and Services and the Participant Shared Information contained in CyncHealth's archived data files. The retrieval, transport, and delivery of any manipulations of data associated with the System and Services to any other third party is prohibited.

4.9 No Third-Party Access. Except as required by law, Participant shall not permit any third party (other than Participant's Authorized Users) to have access to the System to use the Services, or receive an extraction, copy, or the like of Health Information contained within the System without the prior written agreement of CyncHealth. Participant shall promptly notify CyncHealth of any order or demand for compulsory disclosure of Health Information that requires access to or use of the System. Participant shall cooperate fully with CyncHealth in connection with any such demand.

## **5. Individual HIE Opt-Out Rights.**

5.1 Individual's Right to Opt-Out. Each Individual will have the right to decline to have his or her Electronic Health Information transmitted through the System.

- a. The Electronic Health Information and other relevant information about an Individual who chooses to Opt-Out will: (i) continue to be held by the System for the Master Patient Index for the purposes of complying with the Opt-Out; or (ii) continue to be transmitted to Participants or other recipients as required or permitted by Applicable Law (including but not limited to a Public Purpose as defined in this Agreement. CyncHealth's Governing Principles and Policies will outline specific impact for opting out, which will be available on CyncHealth's website.
- b. Individuals may change their Opt-Out status at any time. CyncHealth will establish protocols and forms for implementation of the Individual's right to Opt-Out and for a change in Opt-Out status and other terms and conditions relating to the Opt-Out or change in Opt-Out status that are consistent with this Agreement and CyncHealth's Governing Principles and Policies.

5.2 Participant's Obligations as to Opt-Out of the HIE. CyncHealth will make available to Participants templates for informational materials about the HIE, including opting out of the

HIE (“HIE Informational Materials”). Participant acknowledges that the rights of an Individual stated in this Section are a core principle of the HIE. Participant will support the Individual’s right to opt out or change opt out status by (i) providing reasonable means appropriate to Participant’s size, operations and the nature of Participant’s medical services and infrastructure; and (ii) displaying the HIE Informational Materials or making them available to Individuals at its site(s) of service and website, in both cases as required by Applicable Law or as determined by Participant in its reasonable discretion, applied with due recognition of the importance of informing Individuals of their right to opt-out of the HIE. Participant will utilize only HIE Informational Materials made available by CyncHealth and any additional materials developed by Participant that are approved in advance by CyncHealth. Under no circumstances will Participant grant an Individual rights in connection with an Opt-Out or impose on an Individual’s obligations as to an Opt-Out that vary from the rights and obligations set forth in Applicable Law, this Agreement, or the Governing Principles and Policies.

**6. Hardware and Software.** Participant acknowledges that in order to access and use the System, it may be necessary for Participant to acquire, install, configure and maintain hardware, software and communications systems in order to connect to the System and comply with this Agreement. The parties acknowledge that the Participant will be responsible for all costs associated with any modifications to its internal systems to enable its connection to the System.

**7. Governing Principals and Policies.** CyncHealth is solely responsible for development of CyncHealth Governing Principals and Policies and may amend, or repeal and replace them at any time CyncHealth deems appropriate. The Governing Principals and Policies, as amended from time to time, are incorporated herein by reference and made a part of this Agreement. CyncHealth shall notify Participant of any changes in the Governing Principals and Policies at least thirty (30) days prior to the implementation of the change; if the change requires modifications to the Participant’s system or may otherwise materially affect the Participant’s operations or obligations under this Agreement, CyncHealth shall notify the Participant at least sixty (60) days prior to the implementation of the change. However, if the change is required for CyncHealth or Participant to comply with Applicable Laws or regulations CyncHealth may implement the change and provide notice to Participant within a shorter period of time that CyncHealth determines is appropriate under the circumstances. If Participant is unable or unwilling to comply with or implement the changes to such Governing Principals and Policies, Participant may elect to terminate this Agreement and be released from all further obligations and liabilities pertaining to this Agreement except for those already accrued and those that survive termination hereunder.

**8. Training Costs.** Participant shall be solely responsible for the participation and costs of training Participant’s Authorized Users related to the System and its use.

**9. Fees and Charges.**

9.1 Participation Fees. In consideration for CyncHealth providing Participant with the access and use rights to the System and the Services, Participant agrees to pay the Participation Fees as specified in the Fees Attachment during the Term and any continuation of this Agreement. Participant may choose to include additional services offered by CyncHealth to this Agreement. Fees for any such additional services (“Additional Service Fees”) will be outlined and agreed to in writing in an Addendum to this Agreement.

9.2 Changes in Participation Fees. The CyncHealth Board of Directors may change Participation Fees. CyncHealth shall notify, in writing, Participants of the Board’s intent to modify Participation Fees within thirty (30) days of the decision.

9.3 Payment. The Participation Fees shall be due and payable to CyncHealth within thirty (30) days of invoice. Failure to pay the Participation Fees within such time shall constitute a material breach of this Agreement.

9.4 Taxes. All charges and fees shall be exclusive of all federal, state, municipal, or other government excise, sales, use, occupational, or like taxes now in force or enacted in the future, and Participant agrees to pay any tax that CyncHealth may be required to collect or pay now or at any time in the future and that are imposed upon the sale or delivery of items and Services purchased under this Agreement.

9.5 Other Charges. Participant is responsible for any charges Participant incurs to use the System or Services, such as telephone and equipment charges, and fees charged by Participant's third-party vendors of products and services.

9.6 No Payment for Electronic Health Information. All fees charged, paid, or collected by or on behalf of CyncHealth related to the System and the data contained therein shall be for the rights of Participants to access and use the System and Services as described in this Agreement. CyncHealth, including its Affiliates and Subcontractors, shall not make Participant's Shared Information or any individual's Electronic Health Information provided to CyncHealth by Participant available to any third party for any purpose not expressly authorized in this Agreement. Neither CyncHealth nor its Affiliates or Subcontractors shall offer to pay or solicit or receive any remuneration, directly or indirectly, in return for Electronic Health Information obtained through the System.

**10. Confidential and Proprietary Information.** Each Party ("Receiving Party") shall not disclose the other Party's ("Disclosing Party") Confidential Information to any other person and shall not use any Confidential Information except for the purpose of this Agreement. Except as otherwise provided in this Agreement or other prior written consent, Receiving Party shall not, at any time, directly or indirectly, divulge or disclose Disclosing Party's Confidential Information for its own benefit or for the purposes or benefit of any other person. Receiving Party agrees to hold all Disclosing Party's Confidential Information in strict confidence and shall take all measures necessary to prevent unauthorized copying, use, or disclosure of such information, and to keep Disclosing Party's Confidential Information from falling into the public domain or into the possession of persons not bound to maintain the confidentiality of Confidential Information. Receiving Party will disclose Disclosing Party's Confidential Information to those who need to know for the purpose of this Agreement. Receiving Party shall inform all such recipients of the confidential nature of Disclosing Party's Confidential Information and will enter into a written agreement with them containing confidentiality restrictions no less restrictive than those set forth in this Agreement. Receiving Party shall promptly advise Disclosing Party in writing of any improper disclosure, misappropriation, or misuse of Disclosing Party's Confidential Information by any person, which may come to Receiving Party's attention.

10.1 Equitable Relief. Receiving Party agrees that Disclosing Party will suffer irreparable harm if Receiving Party fails to comply with its obligations set forth in this section, and further agrees that monetary damages will be inadequate to compensate Disclosing Party for any such breach. Accordingly, Receiving Party agrees that Disclosing Party will, in addition to any other remedies available to it at law or in equity, be entitled to the issuance of injunctive relief to enforce the provisions hereof, immediately and without the necessity of posting a bond.

10.2 Return or Destruction of Confidential Information. Upon the written request of Disclosing Party, Receiving Party shall promptly return to Disclosing Party or destroy Disclosing Party's Confidential Information. Destruction of Disclosing Party's Confidential Information shall be

done securely, following NIST Media Sanitization standards (NIST 800-88 current revision). Upon such return or destruction, Receiving Party shall deliver to Disclosing Party a certificate signed by an authorized representative of Receiving Party, in a form satisfactory to Disclosing Party, certifying that Disclosing Party's Confidential Information specified in the request has been returned or destroyed.

10.3 Retention of Confidential Information. Notwithstanding the previous section, Receiving Party shall be permitted to (i) retain Disclosing Party's Confidential Information in archival storage in accordance with its internal data retention policies (but only to the extent such retention is otherwise permitted by Applicable Law), and (ii) retain copies of Disclosing Party's Confidential Information to the extent necessary to comply with applicable legal and regulatory requirements.

10.4 Survives Termination. The Parties' obligations under this section shall survive termination or expiration of this Agreement for any reason.

## **11. Warranty Disclaimer and Limitation of Liability, Indemnity**

11.1 Warranty. CyncHealth represents and warrants that:

- a. the Services shall be provided according to this Agreement; and
- b. the Services, including the System, shall not violate or any way infringe upon any patent, copyright, trade secret, trademark, service mark, trade name or other Intellectual Property Rights of any third party, nor shall the use by Participant of the Services or System provided by CyncHealth and used by Participant in the manner in which they are intended to be used:
  - i. infringe upon any patent, copyright, trade secret, trademark, service mark, trade name or other Intellectual Property Rights of any third party; or
  - ii. contain confidential or proprietary material misappropriated from any third party.

11.2 Pass-Through Warranty. To the extent assignable by CyncHealth to Participant, CyncHealth assigns and passes through to Participant, and Participant shall have the benefit of, any and all third-party warranties and indemnities pertaining to the System. If such warranties and indemnities made to CyncHealth are not assignable to Participant, and if the vendor provides no applicable warranties or indemnities directly to Participant, then during the Term of this Agreement, CyncHealth shall use reasonable efforts to enforce, for the benefit of Participant, such applicable warranties and indemnities as are made by the vendor to CyncHealth. Participant understands and agrees that its sole remedy for the breach of any such warranty or indemnity shall be against the third-party vendor and not against CyncHealth, nor shall any such breach have any effect whatsoever on the rights and obligations of either Party with respect to this Agreement.

11.3 Disclaimer of Warranties. OTHER THAN AS SET FORTH IN THIS SECTION OF THE AGREEMENT, THE SYSTEM AND SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE" WITHOUT ANY WARRANTY OF ANY KIND, EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. CYNCEALTH DISCLAIMS ANY AND ALL RESPONSIBILITIES FOR ANY ACT OR OMISSION TAKEN OR MADE BY PARTICIPANT IN RELIANCE ON THE SYSTEM OR THE INFORMATION IN THE SYSTEM, INCLUDING, WITHOUT LIMITATION, INACCURATE OR INCOMPLETE INFORMATION. EXCEPT FOR EITHER PARTY'S BREACH OF THE CONFIDENTIALITY OBLIGATIONS OR

VIOLATION OF APPLICABLE LAW, IT IS EXPRESSLY AGREED THAT IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUES, LOSS OF USE, OR LOSS OF INFORMATION OR DATA, WHETHER A CLAIM FOR ANY SUCH LIABILITY OR DAMAGES IS PREMISED UPON BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER THEORIES OF LIABILITY, EVEN IF SUCH PARTY HAS BEEN APPRISED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES OCCURRING. CYNCEALTH DISCLAIMS ANY AND ALL LIABILITY FOR ERRONEOUS TRANSMISSIONS AND LOSS OF SERVICE RESULTING FROM COMMUNICATION FAILURES BY CARRIER LINES, TELECOMMUNICATION SERVICE PROVIDERS, OR THE SYSTEM.

11.4 Other Participants. Participant acknowledges that other participants have access to the System and are receiving the Services. CyncHealth represents and warrants that such other Participants have committed to comply with CyncHealth Governing Principals and Policies concerning use of the System; however, the actions of such other Participants are beyond CyncHealth's control. Accordingly, CyncHealth shall have no responsibility or liability for or relating to any impairment of the privacy, security, confidentiality, integrity, availability, or restricted use of any information in the System resulting from any Participant's actions or failures to act, except when CyncHealth has been notified in writing of any of the other Participants' actions or failures to act and has failed to take action to prevent further noncompliance with CyncHealth Governing Principals and Policies by any of the other Participants.

11.5 Unauthorized Access; Lost or Corrupt Data. CYNCEALTH IS NOT RESPONSIBLE FOR UNAUTHORIZED ACCESS TO PARTICIPANT'S TRANSMISSION FACILITIES OR EQUIPMENT BY INDIVIDUALS OR ENTITIES USING THE SYSTEM WHO ARE NOT AUTHORIZED PERSONNEL. CYNCEALTH IS NOT RESPONSIBLE FOR UNAUTHORIZED ACCESS TO, OR ALTERATION, THEFT, OR DESTRUCTION OF, PARTICIPANT'S DATA FILES, PROGRAMS, PROCEDURES, OR INFORMATION THROUGH THE SYSTEM. PARTICIPANT IS SOLELY RESPONSIBLE FOR VALIDATING THE ACCURACY OF ALL OUTPUT AND REPORTS OBTAINED THROUGH USE OF THE SYSTEM OR SERVICES. PARTICIPANT IS RESPONSIBLE FOR MAKING REASONABLE EFFORTS TO PROTECT PARTICIPANT'S OWN DATA AND PROGRAMS FROM LOSS BY IMPLEMENTING APPROPRIATE SECURITY MEASURES, INCLUDING ROUTINE BACKUP PROCEDURES. PARTICIPANT HEREBY WAIVES ANY DAMAGES OCCASIONED BY LOST OR CORRUPT DATA, INCORRECT REPORTS, OR INCORRECT DATA FILES RESULTING FROM PROGRAMMING ERROR, OPERATOR ERROR, EQUIPMENT OR SOFTWARE MALFUNCTION. CYNCEALTH IS NOT RESPONSIBLE FOR THE CONTENT OF ANY INFORMATION TRANSMITTED OR RECEIVED THROUGH CYNCEALTH'S PROVISION OF THE SERVICES.

11.6 Patient Care. Participant shall be solely responsible for all patient care decisions resulting from or involving the use of the System or the Services. Neither Participant nor any other person shall have any claim or cause of action against CyncHealth as a result of patient care rendered or withheld in connection with the use of the System or the Services.

11.7 Limitation of Liability. Each party shall procure and maintain insurance policies with such coverages and in such amounts and for such period of time as required by and set forth in this



Agreement. TO THE FULLEST EXTENT PERMITTED BY LAW, A PARTY'S TOTAL LIABILITY TO THE OTHER PARTY FOR ANY AND ALL INJURIES, CLAIMS, LOSSES, EXPENSES OR DAMAGES WHATSOEVER ARISING OUT OF, OR IN ANY WAY RELATED TO, THIS AGREEMENT FROM ANY CAUSE OR CAUSES INCLUDING BUT NOT LIMITED TO NEGLIGENCE, ERRORS, OMISSIONS, STRICT LIABILITY, BREACH OF CONTRACT OR BREACH OF WARRANTY (HEREAFTER A "CLAIM") SHALL NOT EXCEED THE SUM PAID ON BEHALF OF, OR TO THE LIABLE PARTY, BY ITS INSURERS IN SETTLEMENT OR SATISFACTION OF A CLAIM. IF NO SUCH INSURANCE COVERAGE IS PROVIDED WITH RESPECT TO A CLAIM, THEN THE LIABLE PARTY'S TOTAL LIABILITY FOR SUCH CLAIM SHALL NOT EXCEED AN AMOUNT EQUAL TO THE AGGREGATE FEES ACTUALLY PAID BY PARTICIPANT UNDER THIS AGREEMENT FOR THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT FIRST GIVING RISE TO THE CLAIM OR FIVE HUNDRED THOUSAND DOLLARS (\$500,000), WHICHEVER IS GREATER.

11.8 Indemnity. The Parties shall, to the extent permitted by Applicable Law, indemnify and hold the other harmless from any third-party claim, cost, or liability (including, without limitation, reasonable attorneys' fees) arising from use that is in violation of this Agreement, the Governing Principals and Policies, or Applicable Law, unless caused solely by a Party's or its agent's gross negligence, recklessness, or willful misconduct or omission.

## **12. Insurance.**

12.1 Participant Insurance. Participant agrees to obtain and maintain such policies of general liability, errors and omissions, and professional liability insurance with reputable insurance companies as required by the Governing Principals and Policies. Such policy or policies shall be provided within ten (10) business days of written request by the other Party.

12.2 CyncHealth Insurance. CyncHealth shall purchase and maintain professional and general liability insurance through responsible insurance companies authorized to do business in Iowa, or through a combination of insurance.

12.3 Workers' Compensation Insurance. Each Party shall provide and maintain workers' compensation insurance in the statutory amounts.

**13. Term; Modification, Suspension; Termination.** The initial term of this Agreement shall commence on the date of the last signature below ("Effective Date") and continue for a period of one (1) year, and thereafter shall renew for successive one-year renewal terms until terminated as provided in this Section.

13.1 Termination upon Notice. Either Party may terminate this Agreement without cause upon ninety (90) days prior written notice to the other Party. Participant shall receive no refund of fees upon termination by either Party.

13.2 Termination for Cause. Either Party may terminate this Agreement in the event of a material breach of this Agreement which is not cured to the reasonable satisfaction of the other party within thirty (30) days of delivery of notice of the breach; provided that, if the breach is capable of cure but not within thirty (30) days, this Agreement shall not be terminated as long as the Party in breach commences to cure the breach within sixty (60) days, provides appropriate notice to the other Party, and diligently pursues the cure to completion.

13.3 Modification. CyncHealth may change the terms under which the System is provided to Participant (including terms set forth in this Agreement) by providing Participant not less than ninety (90) days' notice. Upon receipt of such a notice, Participant may terminate this Agreement by giving written notice to CyncHealth on or before the effective date of the change. Participant agrees that Participant's failure to give notice of termination prior to the effective date of the change constitutes acceptance of the change, which shall thereupon become part of this Agreement.

13.4 Termination, Suspension, or Amendment as a Result of Government Regulation. Notwithstanding anything to the contrary in this Agreement, either Party shall have the right, on notice to the other Party, to immediately terminate or suspend this Agreement without liability:

- a. To comply with any order issued or proposed to be issued by any governmental agency;
- b. To comply with any provision of Applicable Law, any standard of participation in any reimbursement program, or any accreditation standard; or,
- c. If performance of any term of this Agreement by either Party would cause it to be in violation of Applicable Law or would jeopardize its tax-exempt status.

13.5 Effect of Termination. Upon any termination of this Agreement, Participant shall cease to be a Participant and neither Participant nor its Authorized Users shall have any rights to use the System. CyncHealth shall remove a terminated Participant from any provider list or directory externally facing and may provide notice of such removal to other Participants via the CyncHealth website.

13.6 Retention of Data upon Termination. To the extent a Participant has provided Participant Shared Information or other information through the System (including to other Participants and CyncHealth), such Electronic Health Information is or has been merged with other participants' Electronic Health Information, such that returning or destroying the Participant's Shared Information at the termination of the Agreement is infeasible. In addition, CyncHealth and the other participants may be required to retain such Electronic Health Information, or information for legal or regulatory reasons. Other participants are not required to return or destroy such Electronic Health Information or other information and may retain it in accordance with their document and data retention policies and procedures, subject to the requirements of Applicable Law.

13.7 Survival Provisions. Any provision of this Agreement that contemplates or requires performance subsequent to any termination of this Agreement survives any termination of the Agreement, including the following sections: Privacy and Security Safeguards; Warranty Disclaimer and limitation of Liability, Indemnity; Insurance; and this Termination, Suspension, or Amendment as a Result of Government Regulation Section.

**14. Applicable Law.** This Agreement shall be governed by the laws of Iowa, without reference to the principles of Iowa law respecting conflicts of laws. Any action or other proceeding arising under or in connection with this Agreement, must be adjudicated exclusively in an Iowa District Court or a federal court in Iowa.

**15. Dispute Resolution.** CyncHealth and Participant understand and agree that the implementation of this Agreement will be enhanced by the timely and open resolution of any disputes or disagreements between such Parties for the mutual benefit of both Parties.

15.1 Each Party hereto agrees to use its best efforts to cause any disputes or disagreements between such Parties to be considered, negotiated in good faith, and resolved as soon as possible.

15.2 In the event that any dispute or disagreement between the Parties cannot be resolved to the satisfaction of CyncHealth's project manager and Participant's project manager within ten (10) days after either such project manager has notified the other in writing of the need to resolve the specific dispute or disagreement within such ten (10) day period, then the dispute or disagreement shall be immediately referred in writing to the respective senior officers of Participant and CyncHealth for consideration.

15.3 No resolution or attempted resolution of any dispute or disagreement pursuant to this Section shall be deemed to be a waiver of any term or provision of this Agreement or consent to any breach or default unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented.

**16. No Assignment.** This Agreement may not be assigned or transferred by a Party without the prior written consent of the other Party, which shall not be unreasonably withheld.

**17. Force Majeure.** Neither Party shall be liable to the other for any delay or failure of performance of this Agreement due to causes beyond its reasonable control, including but not limited to acts of God, riots, war, epidemics, strikes, lockouts, or labor troubles. Any fault, outage or failure in the telecommunications network procured and used by Participant shall be deemed to be outside the control of CyncHealth.

**18. Severability.** Any provision of this Agreement that shall prove to be invalid, void, or illegal, shall in no way affect, impair, or invalidate any other provision of this Agreement, and such other provisions shall remain in full force and effect.

**19. Notices.** Any and all notices required or permitted under this Agreement shall be in writing and sent by United States mail, fax transmission, or electronic mail, with the exception of changes to the CyncHealth Governing Principals and Policies, which will be posted on the CyncHealth website with notice of any material changes. CyncHealth shall post a redline comparisons document of any material changes made to the Governing Principals and Policies for ninety (90 days) following such a change.

**20. Waiver.** No term of this Agreement shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the Party claimed to have waived or consented. Any consent by any Party to, or waiver of a breach by the other, whether expressed or implied, shall not constitute consent to, waiver of, or excuse for, any other different or subsequent breach.

**21. 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. This Agreement is only intended to benefit CyncHealth and Participant.

**22. Independent Contractors.** The Parties to this Agreement are separate and independent entities. Nothing in this Agreement may be construed or be considered to create a relationship of employer and employee, principal and agent, partnership, joint venture, or any relationship other than that of independent entities who have entered into this Agreement solely for the purposes provided.

**23. No Medicare Exclusion.** The Parties hereby represent and warrant that they are not and at no time have been excluded from participation in any federally-funded health care program, including Medicare and Medicaid. Each Party hereby agrees to immediately notify the other Party of any threatened, proposed, or actual exclusion from federally-funded health care program, including Medicare or

Medicaid. In the event that either Party is excluded from any federally-funded health care program during the term of this Agreement, or if at any time after the Effective Date of this Agreement, it is determined that either Party is in breach of this Section, this Agreement shall, as of the effective date of such exclusion or breach, automatically terminate.

**24. No Offshoring.** CyncHealth acknowledges and agrees that the Services performed by CyncHealth for Participant pursuant to this Agreement shall be performed within the continental United States and shall not be outsourced to any offshore or foreign jurisdiction. CyncHealth shall not permit Participant’s Shared Information to be transmitted, electronically or otherwise, to any offshore or foreign jurisdiction without the prior written consent of Participant.

**25. Signature Authority.** The individuals executing this represent and warrant that they are competent and capable of entering into a binding contract, and that they are authorized to execute this Agreement on behalf of the Parties.

**26. Complete Understanding.** This Agreement contains the entire agreement and understanding of the parties with respect to the subject matter of this Agreement, and there are no other written or oral understandings or promises between the parties with respect to the subject matter of this Agreement other than those contained or referenced in the Agreement. All amendments to this Agreement shall be in writing and signed by all parties.

**IN WITNESS WHEREOF,** each of the undersigned has caused this Agreement and all of its integrated Attachments included herein and added any time hereafter, to be duly executed in its name and on its behalf.

<b>[Participant Name]</b>	<b>Iowa Health Information Network, dba CyncHealth Iowa</b>
Name: [Signatory Name]	Name: Jaime Bland
Title: [Signatory Title]	Title: President & CEO
Signature:	Signature:

## Attachment 1: Services

CyncHealth reserves the right to amend, terminate, or add additional HIE services at any time. The availability of CyncHealth Services to individual Participants depends on various factors, including the technical capabilities of CyncHealth and Participant.

CyncHealth will provide the following to Participant and/or Authorized Users:

**Longitudinal Health Record:** CyncHealth will provide modernized interoperable infrastructure which ensures health records follow people across the health ecosystem, helping to reduce provider and administrative burdens across the state. Infrastructure may include API ecosystems, clinical portals, dashboards, and other tools Participant may select from options provided by CyncHealth as part of modernization, as they become available.

**Alerts and Notifications:** CyncHealth will provide event notifications to Participants to facilitate treatment, payment, healthcare operations, and Public Health Activities.

**eHealth Exchange:** CyncHealth enables Participants to query the eHealth Exchange participants. Approved eHealth Exchange participants will also be able to query the System. CyncHealth is a HUB Two-Way, giving the highest level of interaction possible.

**Registries:** CyncHealth will provide one-way or bi-directional integration through a common CyncHealth interface with Iowa Department of Health and Human Services Registries. Current available registries: Electronic Laboratory Reporting (ELR). As additional registries become available, notice will be communicated to Participant.

**Electronic Lab Reporting:** Participants can send electronic laboratory reports identifying required reportable diseases and conditions to the Iowa Department of Health and Human Services.

**Syndromic Surveillance:** Participants send syndromic surveillance data, meeting the State's requirements for data governance, which is then submitted to the Centers for Disease Control and Prevention on behalf of Participants allowing to meet interoperability requirements.

**Training:** CyncHealth offers training for interoperability tools, Direct Secure Messaging, and other HIE Services, as determined by CyncHealth.

**Community Referral System (SDOH):** CyncHealth will support coordinated care designed to address social determinants of health utilizing interoperability standards and technology solutions when applicable.

## **Attachment 2: System**

### **Clinical Data Exchange**

The Health Information Exchange (“HIE”), acting as a Health Data Utility (“HDU”), will provide technology solutions to support the interoperability infrastructure that enables CyncHealth to collect, store, share, and report critical health information in a timely and secure manner across care settings, and amongst providers to support patient-centered coordinated care. This infrastructure enables Data Sharing Participants to exchange data and access to the longitudinal health record for CyncHealth Participants, in compliance with HIPAA, utilizing the most up-to-date Fast Healthcare Interoperability Resources (FHIR) is a Health Level Seven International® (HL7®) standard.

### **Health Exchange Gateway**

A set of functions that connects the System to the U.S. eHealth Exchange and other health information organizations (“HIOs”) by providing the bidirectional exchange of patient information between health information exchange networks, federal organizations, and other healthcare institutions in a secure and auditable way. The eHealth Exchange Gateway connects the System and other HIOs, allowing users to query the other HIOs and allowing information stored within the System to be exchanged with other HIO participants.

### **Direct Secure Messaging (DSM)**

CyncHealth offers Direct Secure Messaging (DSM) service through an EHNAC/DirectTrust ONC certified (2015) HISP. DSM is a Web-based "Communicate Webmail" with built-in Healthcare Provider DSM address lookup. Each Authorized User will be provided with a unique address assigned in a Direct domain customized to the organization.

### **Attachment 3: eHealth Exchange DURSA Mandated Flow-Down Provisions**

These additional flow-down provisions relate to the exchange of Message Content (as defined below) in accordance with the eHealth Exchange Data Use and Reciprocal Support Agreement (the “DURSA”) entered into by CyncHealth. To the extent of a conflict between these provisions and the Agreement, these provisions shall govern with respect to the exchange of Message Content in accordance with the DURSA. These provisions are subject to change in accordance with the requirements of the DURSA.

**1. Definitions.** Capitalized terms used but not otherwise defined in the Agreement or this Attachment shall have the meaning ascribed in the Health Insurance Portability and Accountability Act (“HIPAA”).

1.1 “Applicable Law” means:

- a. for the Participants that are not Federal Participants, all applicable statutes and regulations of the State(s) or jurisdiction(s) in which the Participant operates, as well as all applicable Federal statutes, regulations, standards, and policy requirements; and,
- b. for the federal Participants, all applicable Federal statutes, regulations, standards, and policy requirements.

1.2 “Message Content” means Participant’s Shared Information, Electronic Health Information, de-identified data, individually identifiable information, pseudonymized data, metadata, and schema.

1.3 “Permitted Purpose” means one of the following reasons for which Participant or its Authorized Users may legitimately Transact Message Content:

- a. Treatment, Payment, Health Care Operations, and Authorization based disclosures as defined by HIPAA;
- b. Transaction of Message Content related to value-based payment models, alternative payment arrangements or financial risk-sharing models of any nature whether for Medicare, Medicaid, other federal programs, commercial payers or employer self-insured arrangements. This could include, but is not limited to, participation in Medicare bundled payments, the Medicare Shared Savings Program, other Medicare Alternate Payment programs, Medicaid Managed Care programs or commercial value-based payment programs;
- c. Transaction of Message Content for certain specialized government functions which are necessary to fulfill an agency’s statutory obligations for programs the agency administers including, but not limited to: (i) activities deemed necessary by appropriate military command authorities to assure the proper execution of the military mission; (ii) for the purpose of the Department of Veterans Affairs determining the individual’s eligibility or entitlement to benefits under the VA upon separation or discharge of the individual from military service; (iii) to determine eligibility for or entitlement to or provision of other government benefits; (iv) for activities related to eligibility for or enrollment in a health plan that is a government program; (v) for administering a government program providing public benefits, to coordinate covered functions; or, (vi) to improve administration and management relating to the covered functions of such government programs;
- d. Public Health Activities and reporting as permitted by Applicable Law, including the HIPAA Regulations at 45 C.F.R. § 164.512(b) or 164.514I;

- e. Any purpose to demonstrate meaningful use of certified electronic health record technology by the (i) Submitter, (ii) Recipient or (iii) Covered Entity on whose behalf the Submitter or the Recipient may properly Transact Message Content under this Agreement, provided that the purpose is not otherwise described in subsections 1-46 of this definition and the purpose is permitted by Applicable Law, including but not limited to the HIPAA Regulations. “Meaningful use of certified electronic health record technology” shall have the meaning assigned to it in the regulations promulgated by the Department of Health and Human Services under the American Recovery and Reinvestment Act, Sections 4101 and 4102; or,
- f. Transaction of Message Content in support of an Individual’s: (i) right to access their Electronic Health Information or (ii) right to direct with whom their information can be shared or where their information should be sent. For the avoidance of doubt, a Participant may be prevented from disclosing information due to Applicable Law even though the Individual asserts this Permitted Purpose;

1.4 “Transact” means to send, request, receive, assert, respond to, submit, route, subscribe to, or publish Message Content. While Transacting Message Content in accordance with the DURSA, Participant shall:

- (a) Comply with all Applicable Law;
- (b) Reasonably cooperate with CyncHealth on issues related to the Agreement and the DURSA;
- (c) Transact Message Content only for a Permitted Purpose;
- (d) Use Message Content received from another Participant or Authorized User in accordance with the terms and conditions of the Agreement and the DURSA;
- (e) As soon as reasonably practicable after determining that a Breach occurred, report such Breach to CyncHealth; and,
- (f) Refrain from disclosing to any other person any passwords or other security measures issued to the Authorized User by the Participant.

**2. Compliance and Cooperation.** Participants agree to comply with all Applicable Law and to reasonably cooperate with issues related to DURSA. See Privacy and Security Safeguards Section of Agreement regarding compliance with Applicable Law and cooperation with CyncHealth.

**3. System Access Policies.** For System Access Policies as agreed to in DURSA, please see Section 2 of the Agreement which includes for Permitted Uses, Prohibited Uses, Participant’s systems requirements, Required safeguards, and Notification of CyncHealth in the case of a security breach.

3.1. Identification & Authentication. Participant shall employ a process by which the Participant, or its designee, uses credentials to verify the identity of each Participant User and uses reasonable security measures to ensure the protection of Confidential Information.



## **Attachment 4: Unite Us Platform**

These additional provisions relate to the Unite Us Platform in accordance with the agreement between Unite Us and CyncHealth. To the extent of a conflict between these provisions and the Agreement, these provisions shall govern with respect to the Unite Us Platform. These provisions are subject to change in accordance with requirements of the Unite Us Platform.

### **1. Definitions**

1.1 “Network” shall mean the network created by the Unite Us platform that connects health and social service organizations.

1.2 “Network Participant” shall mean any health and social service organization that connects clients with services using the Unite Us Platform

1.3 “Network Participant Data” means information (including, without limitation, PII provided to Network Participant by or at the direction of a client or information Network Participant requires to provide and document services to such client within the Unite Us Platform in the course of the Network Participant’s use of the Network.

1.4 “Authorized User” shall mean individuals associated with or employed by a Network Participant that such participant has authorized to access the Unite Us Platform.

### **2. While connected to the Network, Network Participant shall:**

2.1 Make a reasonable effort to keep an up-to-date profile within the Unite Us Platform by regularly updating available programs, eligibility for such programs, and appropriate contact information for processing of assistance requests and referrals;

2.2 Be responsible for the acts or omissions of any person who accesses the Unite Us Platform using passwords or access procedures provided to or created by Network Participant or its Authorized User. Unite Us reserves the right to refuse registration of, or to cancel, login IDs that violate these Network Terms;

2.3 Notify Unite Us immediately upon learning of any unauthorized use of Network Participant’s or any of its Authorized Users’ accounts;

2.4 Require each Authorized User accessing the Unite Us Platform to enter into an electronic end-user license agreement governing access to, use of, and all rights and obligations of the end-user relating to the Unite Us Platform; and,

2.5 Immediately terminate access to the Unite Us Platform of any Authorized User who is no longer associated with or employed by such Network Participant or shall contact Unite Us to terminate such access.

**3. Hardware and Connectivity.** Network Participant shall be solely responsible for all hardware and Internet connectivity required to access the Network and shall use supported Internet browsers to access the Unite Us Platform.

**4. License to the Unite Us Platform.** Unite Us hereby grants to Network Participant a non-exclusive, non-transferable license to (a) access and use the Unite Us Platform for the benefit of Network Participant; (b) reproduce, distribute and display the documentation provided by Unite Us solely to its Authorized Users; and (c) use and access any Network Participant Data as necessary for the care and treatment of individuals seeking treatment or services from Network Participant in compliance with HIPAA and other applicable privacy laws.

**5. Restrictions.** Network Participant may not and may not permit third parties to (a) sell, assign, sublicense or otherwise transfer the Unite Us Platform to third parties; (b) resell the Unite Us Platform to any third party; (c) use the Unite Us Platform to provide or perform service bureau processing, or hosting services for any third party; (d) otherwise use the Unite Us Platform for the benefit of any third party; (e) disassemble, decompile, reverse engineer or use any other means to attempt to discover any source code of the Unite Us Platform, or the underlying ideas, algorithms or trade secrets therein; (f) use the Unite Us Platform to knowingly transmit malware, spam or other unsolicited emails in violation of Applicable Law, or to post or send any unlawful, threatening, harassing, racist, abusive, libelous, pornographic, defamatory, obscene, or other similarly inappropriate content; (g) remove any copyright notice, trademark notice or other proprietary legend set forth on or contained within any of the documentation or other materials provided by Unite Us; or (h) otherwise use the Unite Us Platform or Network Participant Data in violation of any Applicable Law.

**6. Data.** Participation in the Network requires Participants to grant all other Network Participants and their Authorized Users an irrevocable, worldwide, non-exclusive, royalty-free, fully paid-up license to access the Network Participant Data as is permitted for the Unite Us Platform to function. All use of such Network Participant data must conform to all Applicable Laws. In addition, Network Participants grant Unite Us an irrevocable, worldwide, non-exclusive, royalty-free, fully paid-up license to use, reproduce, modify, distribute and display Network Participant Data (i) on the Unite Us Platform, and (ii) for Network evaluation.

6.1 Data Ownership. Each Network Participant shall remain the owner of any Network Participant Data inputted by such Network Participant of all individuals registered with a Network Participant and nothing here in is intended or will be deemed in any way to limit a Network Participant's use of its own Network Participant Data outside of the Unite Us Platform.

6.2 Data Restrictions. Network Participant may include personally identifiable data (including protected health information) (collectively, "PII") in Network Participant Data and provide PII to Unite Us in the course of using the Unite Us Platform only if (a) disclosure of such PII is necessary for Network Participant's exploitation of the Unite Us Platform and services provided by Unite Us; (b) Network Participant has all consents, rights and authorizations under Applicable Law necessary to provide Unite Us with the Network Participant Data hereunder; (c) such PII is collected by Network Participant and disclosed to Unite Us pursuant to and in accordance with Network Participant's applicable privacy policies and (d) Network Participant's provision of such PII to Unite Us and Unite Us' retention and use of such PII as contemplated under these Network Terms does not and will not violate any applicable Network Participant privacy policy or any Applicable Laws.

## Attachment 5: Fees

The Participation Fee is for the calendar year of the Effective Date. Annual Participation Fees are subject to change as outlined in the Fees and Charges Section of this Agreement. Should Participant choose to add any services not provided for in this Agreement, fees for any such additional services (“Additional Service Fees”) will be outlined and agreed to in an Addendum to this Agreement.

Invoicing will begin upon the Effective Date of this Agreement. The annual fee for the initial calendar year of the Agreement’s Effective Date will be pro-rated through the remainder of the calendar year.

The following are the annual CyncHealth Participation Fees as of the Effective Date of this Agreement:

<b>Facility Type</b>	<b>Fee Formula</b>
Assisted Living Facilities	\$1,500 fee
Behavioral Health Facilities - Outpatient	\$0.10 fee per visit
Behavioral Health Facilities - Inpatient	\$3,000 fee per EHR feed
Federally Qualified Health Centers	\$200 fee per NPI
Hospitals	\$3.00 fee per adjusted discharge <sup>1</sup>
Independent Clinics	\$400 fee per NPI
Local Public Health Departments	
<i>Urban</i>	\$1,500
<i>Micro Urban</i>	\$1,000
<i>Rural</i>	\$500
Payer	\$1.50 Per member, per year
Skilled Nursing Facilities	\$1,000 + \$0.02 per patient, per day*

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<sup>1</sup> Calculated based on most recently filed Medicare cost report available.

## **Attachment 5: Encryption for HITRUST-certified Environments**

These additional cryptographic provisions relate to the technology and services provided by CyncHealth through its HITRUST-certified technical infrastructure. To the extent of a conflict between these provisions and the Agreement, these provisions shall govern with respect to encryption and cryptographic control. These provisions are subject to change in accordance with regulatory requirements, legal requirements, security standards, or updates to the environment that mandate different encryption or cryptographic control levels.

These provisions are in relation to all aspects of the HITRUST-certified environment, including but not limited to CyncHealth's:

- i. AWS Transfer Family Service
- ii. AWS Key Management Service
- iii. AWS S3 Service
- iv. AWS Secrets Manager
- v. AWS Lambda

At a minimum, the CyncHealth HITRUST-certified environment maintains cryptographic controls and encryption to levels in compliance with all applicable regulations and AWS-supported standards across all utilized applications and services. Participant shall be responsible for the following cryptographic control and encryption requirements in relation to the CyncHealth HITRUST-certified environment:

1. Encryption shall be used during transmission, storage, transformation, and rest of data exchanged between Participant and CyncHealth.
2. Encryption over network connections shall use, at minimum, AWS-supported and non-deprecated cryptographic algorithms.
3. Encryption at rest or in storage shall use, at minimum, AWS-supported and non-deprecated cryptographic algorithms.

## Attachment 6: Business Associate Agreement

**THIS BUSINESS ASSOCIATE AGREEMENT** (“BAA”) amends and is made a part of all Services Agreements (as defined below) between the Iowa Health Information Network, DBA CyncHealth Iowa (“Business Associate”) and Participant Name (“Participant” or “Covered Entity”) (collectively, the “Parties”), as of the date of last signature below. This Agreement supersedes and replaces all prior Business Associate Agreements or Amendments between the parties.

### 1. Definitions

- a. Catch-all definition. The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclose or Disclosure, Electronic Protected Health Information, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information or PHI, Required By Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use. Other capitalized terms used but not otherwise defined in this Agreement shall have the meaning ascribed in the HIPAA Rules.
  - b. Specific definitions.
    - i. “**Business Associate**” shall generally have the same meaning as the term “Business Associate” at 45 CFR 160.103, and in reference to the party to this Agreement, shall mean the party identified above as Business Associate.
    - ii. “**Business Associate Functions**” means all functions performed by Business Associate under one or more Services Agreements on behalf of Covered Entity which involve the creation, receipt, maintenance or transmission of PHI by Business Associate or its agents or Subcontractors on behalf of Covered Entity.
    - iii. “**Covered Entity**” shall generally have the same meaning as the term “Covered Entity” at 45 CFR 160.103, and in reference to the party to this Agreement, shall mean the party identified above as Covered Entity.
    - iv. “**HIPAA Rules**” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164. A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended at the time the section is to be applied.
    - v. “**Qualified Service Organization**” shall have the same meaning as the term “Qualified Service Organization” in 42 C.F.R. § 2.11.
    - vi. “**Services Agreements**” means all agreements whether now in effect or hereafter entered into, between Covered Entity and Business Associate for the performance of Business Associate Functions by Business Associate.
2. Purpose. Covered Entity is a covered entity under HIPAA and CyncHealth 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. This BAA is made part of, and subject to the terms and conditions of, each Services Agreements. This Agreement and the Services Agreements shall be construed wherever reasonable as being consistent with each other. When such construction is unreasonable, the terms of this Agreement shall take precedence. In addition, in the case that the Covered Entity operates a federally assisted program that requires compliance with the Federal Confidentiality of Alcohol and Drug Abuse Patient Records law and regulations, 42 U.S.C § 290dd-2 and 42 C.F.R Part 2 (collectively "Part 2"), Business Associate is also a Qualified Service Organization ("QSO") under Part 2 and agrees to certain mandatory provisions regarding the disclosure of substance abuse treatment information.

- 3. Obligations of Business Associate.** As an express condition of performing Business Associate Functions, Business Associate agrees to:
- a. Not Use or Disclose PHI other than as permitted or required by this Agreement or as otherwise Required by Law.
  - b. Use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to Electronic Protected Health Information, to prevent Use or Disclosure of PHI other than as provided for in this Agreement.
  - c. Report to Covered Entity's designated privacy official, without unreasonable delay but in no event more than three (3) business days after discovery by Business Associate, any Use or Disclosure of PHI not provided for by this Agreement of which Business Associate becomes aware, including any Breach of Unsecured Protected Health Information as required at 45 CFR 164.410, and any Security Incident of which it becomes aware, together with any remedial or mitigating action taken or proposed to be taken with respect thereto. If Business Associate does not have available complete information in satisfaction of 45 CFR 164.410(c) within three (3) business days of discovery of the impermissible Use or Disclosure, Business Associate shall provide all information it has at such time, and immediately update Covered Entity with additional information as it becomes available through prompt investigation. This BAA serves as Business Associate's notice to Covered Entity that attempted but unsuccessful Security Incidents regularly occur and that no further notice will be made by Business Associate unless there has been a successful Security Incident or attempts or patterns of attempts that Business Associate determines to be suspicious. Business Associate shall cooperate with Covered Entity in mitigating, at its sole expense, any harmful effects of any impermissible Use or Disclosure.
  - d. In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), ensure that any Subcontractors that create, receive, maintain, or transmit PHI on behalf of Business Associate agree in writing to the same restrictions, conditions, and requirements that apply to Business Associate with respect to such information.
  - e. Within five (5) business days of notification by Covered Entity, make available to Covered Entity the Individual's PHI maintained by Business Associate in a Designated Record Set in accordance with 45 CFR 164.524. If the requested PHI is maintained in one or more Designated Record Sets electronically and if the Individual requests an electronic copy of such PHI, Business Associate must provide Covered Entity with access to the PHI in the electronic form and format requested by the Individual, if it is readily producible in such form and format; or, if not, in a readable electronic form and format as agreed to between Covered Entity and the Individual and within the technical capability of Business Associate. Business Associate will report any request for access that it receives directly from an Individual to the Covered Entity within five (5) business days of receipt. Covered Entity will determine any appropriate limitations on such access and the parties will determine a reasonable method for providing such access.
  - f. Notify Covered Entity within five (5) business days of any request by an Individual to amend PHI maintained by Business Associate in a Designated Record Set, direct the requesting Individual to Covered Entity for handling of such request, and promptly incorporate any amendment accepted by Covered Entity and communicated to Business Associate in accordance with 45 CFR 164.526. Business Associate is not authorized to independently agree to any amendment of PHI and shall direct all Individuals to Covered Entity to make any such request.
  - g. 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 45

CFR 164.528 and within five (5) business days of notification by Covered Entity report such Disclosures to Covered Entity in a form permitting Covered Entity to respond to an Individual's request for an accounting. Business Associate is not authorized to independently respond to an Individual's request and shall direct all Individuals to Covered Entity to make any such a request.

- h. Make its internal practices, books and records relating to this Agreement available to the Secretary of HHS and to Covered Entity for purposes of determining Covered Entity's and Business Associate's compliance with the HIPAA Rules.
- i. Comply with any voluntary restriction on Use or Disclosure of PHI under 45 CFR 164.522(a) of the HIPAA Rules when accepted by Covered Entity and communicated to Business Associate. Business Associate shall direct Individuals to Covered Entity to make any such request.
- j. Comply with any reasonable requests by Individuals under 45 CFR 164.522(b) to receive communications of PHI by alternative means or at alternate locations when accepted by Covered Entity and communicated to Business Associate. Business Associate shall direct Individuals to Covered Entity to make any such request.
- k. Limit the Uses and Disclosures of, or requests for, PHI for purposes described in this Agreement to the Minimum Necessary to perform the required Business Associate Function. Business Associate shall comply with any additional requirements for the determination of Minimum Necessary as are required from time to time by the HIPAA Rules, as amended, or through additional guidance published by the Secretary.
- l. To the extent Business Associate is expressly obligated under the Services Agreements to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligation(s).
- m. Except for the specific Uses and Disclosures for the Business Associate's own management and administration or to carry out the legal responsibilities of Business Associate, Business Associate shall not Use or Disclose PHI in a manner that would violate the HIPAA Rules if done by Covered Entity.
- n. Business Associate shall not receive remuneration, either directly or indirectly in exchange for PHI, except as may be permitted by HIPAA.
- o. Where applicable, Business Associate acknowledges that in receiving, storing, processing, or otherwise using any information from the alcohol/drug programs about the clients of a federally assisted program that requires compliance with Part 2, it is fully bound by the provisions of the federal regulations governing Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2.

**4. Permitted Uses and Disclosures of PHI.** Business Associate shall only Use or Disclose PHI as follows:

- a. Business Associate may Use or Disclose PHI as Required by Law and to perform functions, activities, or services as specified in the Participation Agreement.
- b. Business Associate may Use or Disclose PHI as necessary to carry out Business Associate Functions.
- c. Business Associate may Use PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate.
- d. Business Associate may Disclose PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate,

provided the Disclosures are Required by Law, or Business Associate obtains reasonable assurances from the person to whom the information is Disclosed that the information will remain confidential and be Used or further Disclosed only as Required by Law or for the purposes for which it was Disclosed to the person, and the person notifies Business Associate in writing of any instances of which it is aware in which the confidentiality of the information has been breached or compromised within three (3) business days of becoming aware of the occurrence.

- e. Business Associate may provide Data Aggregation services relating to the Health Care Operations of Covered Entity.
- f. Business Associate may Use PHI to de-identify the information in accordance with 45 CFR 164.514(a)-(c).
- g. Business Associate will require any agent and/or subcontractors who may have access to PHI to agree to comply with 42 C.F.R. Part 2, and if Business Associate learns of a pattern or practice by the agent/subcontractor that is a material breach of the contract with Business Associate, Business Associate will take reasonable steps to cure the breach or terminate the contract, if feasible.

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

- a. Notify Business Associate promptly of any restriction on the Use or Disclosure of PHI that Covered Entity has agreed to or is required to abide by under 45 CFR 164.522, to the extent such restriction may affect Business Associate's Use or Disclosure of PHI.
- b. Notify Business Associate of any changes in, or revocation of, the permission by an Individual to Use or Disclose PHI, to the extent that such changes may affect Business Associate's Use or Disclosure of PHI.
- c. Provide Business Associate with a copy of any amendment to PHI which is accepted by Covered Entity under 45 CFR 164.526 which Covered Entity believes will apply to PHI maintained by Business Associate in a Designated Record Set.
- d. Not request Business Associate to Use or Disclose PHI in any manner that would not be permissible under the HIPAA Rules if done by Covered Entity, with exception for any Data Aggregation services permitted under Section 4.
- e. Obtain any consent, authorization, or permission that may be required by the Privacy Rule, Part 2.

**6. 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, the parties agree to amend this Agreement in such manner as is necessary to comply with such law or regulation. If the parties are unable to agree on an amendment within thirty (30) days, either party may terminate the Services Agreements on not less than thirty (30) days' written notice to the other.

**7. 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 Agreements and shall continue in effect until Business Associate has performed all obligations under this Agreement and has either returned or destroyed all PHI.



- b. Termination. Covered Entity may immediately terminate this Agreement and the Services Agreements, if Covered Entity makes the determination that Business Associate has breached a material term of this Agreement. Alternatively, Covered Entity may choose to provide Business Associate with written notice of the existence of an alleged material breach, and afford Business Associate an opportunity to cure the alleged material breach upon mutually agreeable terms. Failure to take reasonable steps to cure the breach is grounds for the immediate termination of this Agreement.
- c. Business Associate Obligations Upon Termination. To the extent the Participation Agreement specifically deals with the return or destruction of PHI following termination or expiration of the Participation Agreement, the provisions of the Participation Agreement shall govern, so long as such provisions are compliant with HIPAA. Upon termination of this Agreement for any reason, Business Associate, with respect to PHI received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, shall:
  - i. Retain only that PHI which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities or as to which Business Associate reasonably determines such PHI is technically incapable of being returned or destroyed;
  - ii. Return to Covered Entity or, if not provided for in the Services Agreements, destroy the PHI not retained pursuant to Section 8.c.(i) that the Business Associate maintains in any form;
  - iii. Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to Electronic Protected Health Information retained by Business Associate to prevent Use or Disclosure of the PHI, other than as provided for in this Section, for as long as Business Associate retains the PHI;
  - iv. Not Use or Disclose the PHI retained by Business Associate other than for the purposes for which such PHI was retained and subject to the same conditions set out at Sections 4.c. and 4.d. which applied prior to termination; and,
  - v. Return to Covered Entity or, if not provided for in the Services Agreements, destroy the PHI retained by Business Associate pursuant to Section 8.c.(i) when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities, except where Business Associate reasonably determines such PHI is not technically capable of being returned or destroyed.

**8. Qualified Services Organization Agreement**. Where applicable, Covered Entity and Business Associate hereby agree that this Agreement constitutes a Qualified Service Organization Agreement ("QSOA") as required by 42 C.F.R. Part 2. Accordingly, information obtained by Business Associate relating to individuals who may have been diagnosed as needing, or who have received, substance use disorder treatment services shall be maintained and used only for the purposes intended under this Agreement and in conformity with all applicable provisions of 42 U.S.C. §290-dd-2 and the underlying federal regulations, 42 C.F.R. Part 2. This includes but is not limited to resisting any efforts in judicial proceedings to obtain access to the PHI, pursuant to 42 C.F.R. Part 2.

**9. Miscellaneous**

- a. Covered Entity. For purposes of this Agreement, and as applicable to the Business Associate Functions of Business Associate under the Services Agreements covered by this Agreement, references to Covered Entity shall include the named Covered Entity and all other covered entities named in and covered by the Services Agreements.

- 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 and Business Associate under the HIPAA Rules.
- c. Interpretation; Agreement. This Agreement shall be interpreted and applied in a manner consistent with Covered Entity’s and Business Associate's obligations under the HIPAA Rules, including Part 2. 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. Severability. The invalidity or unenforceability of any provisions of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement.
- f. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

**10. Insurance.** Business Associate agrees to maintain appropriate insurances levels as outlined in Insurance Section of the Participation Agreement.

**IN WITNESS WHEREOF**, each of the undersigned has caused this Agreement and all of its integrated Attachments included herein and added any time hereafter, to be duly executed in its name and on its behalf.

<b>[Participant Name]</b>	<b>Iowa Health Information Network, dba CyncHealth Iowa</b>
Name: [Signatory Name]	Name: Jaime Bland
Title: [Signatory Title]	Title: President & CEO
Signature:	Signature: