

## Business Associate Agreement

**THIS BUSINESS ASSOCIATE AGREEMENT**, entered into as of May 19, 2016, (the “Effective Date”) is by and between Kelly Hart & Hallman LLP (“Business Associate”), and Nacogdoches County Hospital District d/b/a Nacogdoches Memorial Hospital (“Covered Entity”).

**Covered Entity** will make available or transfer to Business Associate certain Protected Health Information in conjunction with services that Business Associate is providing to Covered Entity pursuant to that certain Written Agreement entered into by the parties effective as of May 19, 2016 (the “Services Agreement”).

**Business Associate** provides services to Covered Entity pursuant to the Services Agreement. Business Associate will have access to and will receive from Covered Entity certain Protected Health Information in the course of providing those services to Covered Entity.

**Covered Entity and Business Associate** enter into this Agreement in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-91 and related regulations (45 CFR Parts 160, 162, and 164) (“HIPAA”) and the Health Information Technology for Economic and Clinical Health Act of 2009, Title XIII of the American Recovery and Reinvestment Act of 2009, Public Law 111-005 (“HITECH”), including all applicable rules and regulations issued by the U.S. Department of Health and Human Services (“HHS”). The parties agree that the Protected Health Information transferred or made available to Business Associate by Covered Entity may be used or disclosed only in accordance with this Agreement and applicable provisions of HIPAA and HITECH.

### **Health Information Privacy**

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, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required By Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

#### Specific definitions:

(a) Business Associate. “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 Kelly Hart & Hallman LLP.

(b) Covered Entity. “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 Nacogdoches County Hospital District d/b/a Nacogdoches Memorial Hospital.

(c) HIPAA Rules. “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

## **Obligations and Activities of Business Associate**

Business Associate agrees to:

- (a) Not use or disclose protected health information other than as permitted or required by the Agreement or as 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 protected health information other than as provided for by the Agreement. The additional requirements of HITECH that relate to security and that are made applicable with respect to HIPAA Covered Entities shall also be applicable to Business Associate and are hereby incorporated into this Business Associate Agreement by reference.
- (c) Report to covered entity any use or disclosure of protected health information not provided for by the Agreement of which it becomes aware within 10 days of discovery, including breaches of unsecured protected health information as required at 45 CFR 164.410, and any security incident of which it becomes aware;
- (d) In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any subcontractors that create, receive, maintain, or transmit protected health information on behalf of the business associate agree to the same restrictions, conditions, and requirements that apply to the business associate with respect to such information;
- (e) Make available protected health information in a designated record set to the “covered entity” within 10 days of discovery as necessary to satisfy covered entity’s obligations under 45 CFR 164.524;
- (f) Make any amendment(s) to protected health information in a designated record set as directed or agreed to by the covered entity pursuant to 45 CFR 164.526, or take other measures as necessary to satisfy covered entity’s obligations under 45 CFR 164.526;
- (g) Maintain and make available the information required to provide an accounting of disclosures to the covered entity as necessary to satisfy covered entity’s obligations under 45 CFR 164.528;
- (h) To the extent the business associate is 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); and
- (i) Make its internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA Rules.

**Mitigation.** Business Associate will mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.

**Prohibited Uses and Disclosures.** Business Associate agrees not to use or disclose Protected Health Information for fundraising or marketing purposes as those terms are defined under HIPAA and HITECH. Business Associate shall not directly or indirectly receive remuneration in exchange for Protected Health Information, except with the prior written consent of Covered Entity and as permitted by HITECH, 42 USC §17935(d)(2). Business Associate shall not disclose Protected Health Information to a Health Plan for Payment or Health Care Operations purposes if the individual has requested this restriction and had paid in full for the health care item or service to which the Protected Health Information solely relates.

**Government Access to Documents.** Business Associate will make internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity available to the Secretary of HHS for purposes of determining Covered Entity's compliance with the Privacy Rule.

**Accountings.** Business Associates agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Entity to respond to a request by an individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528 and 42 USC 17935(b). If an Individual makes such a request, Business Associate agrees to make available to covered Entity the information required for Covered Entity to respond to that Individual's request for an accounting of disclosures of Protected Health Information in accordance with the requirements of 45 CFR 164.528 and HITECH and to do so in a time and manner that will permit Covered Entity to respond to the request in accordance with the requirements of 45 CFR 164.528 and HITECH, including but not limited to 42 USC 17935(c). The parties recognize that when an Individual has a right to an accounting, the Individual generally has a right to an accounting of disclosures that were made six (6) years before the request (45 CFR 164.528), but that in the case of disclosures from an Electronic Health Record for Treatment, Payment or Health Care Operations purposes, the Individual has a right only to an accounting of disclosures that were made three (3) years before the request (42 USC 17935(c)(1)(B)). Business Associate agrees to make and maintain appropriate disclosure logs to the extent that it is subject to these requirements. At a minimum, the logs shall include: (i) the date of disclosure; (ii) the name of the entity or person who received Protected Health Information and, if known, the address of the entity or person; (iii) a brief description of Protected Health Information disclosed; and (iv) a brief statement of purpose of the disclosure that reasonably informs the Individual of the basis for the disclosure, or a copy of the Individual's authorization, or a copy of the written request for disclosure. If the request for an accounting is delivered directly to Business Associate. Business Associate shall within ten (10) business days of receipt of the request forward it to Covered Entity.

#### **Permitted Uses and Disclosures by Business Associate**

- (a) Business associate may only use or disclose protected health information as necessary to

perform the services set forth in Service Agreement.

(b) Business associate may use or disclose protected health information as required by law.

(c) Business associate agrees to make uses and disclosures and requests for protected health information consistent with covered entity's minimum necessary policies and procedures subject to the following minimum necessary requirements.

(d) Business associate may not use or disclose protected health information in a manner that would violate Subpart E of 45 CFR Part 164 if done by covered entity.

(e) Except as otherwise limited to this Agreement, Business Associate may use Protected Health Information to provide Data Aggregation services to Covered Entity as permitted by 42 CFR 164.504(e)(2)(i)(B).

(f) Business Associate may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR 164.502(j)(1).

(g) The Business Associate is not authorized to use Protected Health Information to de-identify the information in accordance with 45 CFR 164.514(a)-(c).

## **Term and Termination**

(a) Term. The Term of this Agreement shall be effective as of the effective date set forth above, and shall continue in force so long as any underlying contract between the Provider and Business Associate remains in force.

(b) Termination for Cause. Business associate authorizes termination of this Agreement by covered entity, if covered entity determines business associate has violated a material term of the Agreement.

(c) Obligations of Business Associate Upon Termination.

Upon termination of this Agreement for any reason, business associate shall return to covered entity all protected health information received from covered entity, or created, maintained, or received by business associate on behalf of covered entity, that the business associate still maintains in any form. Business associate shall retain no copies of the protected health information.

Upon termination of this Agreement for any reason, business associate, with respect to protected health information received from covered entity, or created, maintained, or received by business associate on behalf of covered entity, shall:

1. Retain only that protected health information which is necessary for business associate to continue its proper management and administration or to carry out its legal responsibilities;

2. Return to covered entity [or, if agreed to by covered entity, destroy] the remaining protected health information that the business associate still maintains in any form;
3. Continue to 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 the protected health information, other than as provided for in this Section, for as long as business associate retains the protected health information;
4. Not use or disclose the protected health information retained by business associate other than for the purposes for which such protected health information was retained and subject to the same conditions set out at [Insert section number related to paragraphs (e) and (f) above under "Permitted Uses and Disclosures By Business Associate"] which applied prior to termination; and
5. Return to covered entity the protected health information retained by business associate when it is no longer needed by business associate for its proper management and administration or to carry out its legal responsibilities.
6. If termination of the contract or agreement is not feasible, a covered entity is required to report the problem to the Department of Health and Human Services (HHS) Office for Civil Rights (OCR).

(d) Survival. The obligations of business associate under this Section shall survive the termination of this Agreement.

**Miscellaneous**

(a) Interpretation. Any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA Rules.

(b) No Third Party Beneficiaries. Nothing in this Agreement shall be deemed to confer or shall confer on any person or entity other than the parties any rights, remedies, obligations, or liabilities whatsoever.

**Business Associate and Covered Entity** have each caused this Business Associate Agreement to be signed and delivered by its respective duly authorized representative:

**BUSINESS ASSOCIATE**

**Kelly Hart & Hallman LLP**

By: 

Print Name: TRAVIS CLARK

Title: PARTNER

**COVERED ENTITY**

**Nacogdoches County Hospital  
District d/b/a Nacogdoches  
Memorial Hospital**

By: 

Print Name: Scott Street

Title: CEO