

This Business Associate Agreement ("BAA") is entered into as of June 30, 2017 and shall be effective as of the Transfer Completion Date (as defined below)("Effective Date") by and between Hawaii Health Systems Corporation, a public body corporate and politic and an instrumentality and agency of the State of Hawaii ("HHSC" or "Covered Entity") and Maui Health System, A Kaiser Foundation Hospitals LLC, a Hawaii limited liability company ("MHS") that owns and operates certain hospitals and other healthcare facilities on the island of Maui (the "Facilities"), on behalf of the KP Entities (together with MHS, "KP" or "Business Associate"). (HHSC and KP may be referred to herein individually as a "Party" and collectively as the "Parties").

RECITALS

- A. HHSC provides to Business Associate, or Business Associate has access to, certain PHI (as defined below) in the course of the parties' Business Relationship (as defined below).
- B. In order to protect the privacy of the PHI and to comply with HIPAA and the HIPAA Regulations (as defined below), HHSC and Business Associate desire to enter into this BAA setting forth the terms and conditions of the use and disclosure of PHI.

In consideration of the mutual promises set forth below, the parties agree as follows:

1. DEFINITIONS

- 1.1 General Rule. Capitalized terms not otherwise defined in this BAA shall have the same meaning as those terms in the Privacy Rule, the Security Rule, the Breach Notification Rule, and in HIPAA and the HITECH Act, and any regulations promulgated thereunder, as and when amended from time to time.
- 1.2 "Breach" shall have the meaning provided under 45 C.F.R. Section 164.402, as and when amended from time to time.
- 1.3 "Breach Notification Rule" means the Breach Notification for Unsecured Protected Health Information interim Final Rule at 45 C.F.R. Parts 160 and 164, Subpart D, as and when amended from time to time.
- 1.4 "Electronic Health Record" shall have the meaning provided under Section 13400(5) of the HITECH Act (42 U.S.C. Section 17921(5)), as and when amended from time to time.
- 1.5 "EPHI" means electronic protected health information as defined in 45 C.F.R. Section 160.103, as and when amended from time to time.
- 1.6 "HIPAA" means the Health Insurance Portability & Accountability Act of 1996, P.L. 104-191 as and when amended from time to time.
- 1.7 "HIPAA Regulations" means the regulations promulgated under HIPAA and the HITECH Act by the U.S. Department of Health and Human Services ("HHS"), including, but not limited to the Privacy Rule, the Security Rule and the Breach Notification Rule, as and when amended from time to time.
- 1.8 "HITECH Act" means the Health Information Technology for Economic and Clinical Health Act, Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009, as and when amended from time to time.
- 1.9 "KP Entity" or "KP Entities" means the entities comprising Kaiser Permanente's integrated health care organization in each of its regions, including, without limitation, Kaiser Foundation Health Plan, Inc.

and each of its subsidiary regional health plans, Kaiser Foundation Hospitals and its subsidiaries, and each regional Permanente medical group and Permanente dental group and their respective subsidiaries.

1.10 “KP Services” means the services provided by KP to HHSC under the TSA, including, without limitation, Record Management Services and HIM Services.

1.11 “Lease” means that certain State of Hawaii Hospital Facilities Lease (Maui Memorial Medical Center, Kula Hospital & Clinics, and Lanai Community Hospital) between HHSC and MHS dated April 22, 2016.

1.12 “Privacy Rule” means the Standards for Privacy of Individually Identifiable Health Information, codified at 45 C.F.R. parts 160 and 164, Subparts A and E, as amended from time to time.

1.13 “PHI” means Protected Health Information as that term is defined under the Privacy Rule, including but not limited to, 45 C.F.R. Section 160.103, that is provided by HHSC to Business Associate, or is accessed, used, created, received, transmitted or maintained by Business Associate in connection with the performance of Record Management Services and/or HIM Services under the Transition Services Agreement. PHI does not include Protected Health Information of the Facilities created or maintained by MHS in connection with the operation of the Facilities on or after the Transfer Completion Date.

1.14 “Secretary” means the Secretary of Health and Human Services (“HHS”).

1.15 “Security Rule” means the Standards for Security for the Protection of Electronic Protected Health Information, codified at 45 C.F.R. parts 160 and 164, Subpart C, as amended from time to time.

1.16 “Transfer Agreement” means that certain Maui Regional Hospitals Transfer Agreement dated as of January 15, 2016 by and among HHSC, MHS, the State of Hawaii, the Maui Region of Hawaii Health System Corporation, and Kaiser Foundation Hospitals.

1.17 “Transfer Completion Date” shall have the meaning set forth in the Transfer Agreement.

1.18 “Transition Services Agreement” shall mean that certain Transition Services Agreement between MHS and HHSC dated June 30, 2017 and entered contemporaneously herewith that contemplates the execution and delivery of this BAA, including, without limitation, that certain Record Management Service Arrangement between HHSC and MHS (Exhibit C to TSA) and that certain Employee Lease Arrangement between HHSC and MHS (Exhibit D to TSA).

1.19 “Unsecured Protected Health Information” shall have the meaning provided under 45 C.F.R. Section 164.402, as amended from time to time.

2. OBLIGATIONS OF BUSINESS ASSOCIATE

2.1 General Requirements. Except as otherwise limited in this BAA, Business Associate may Use or Disclose PHI to perform KP Services for, or on behalf of, HHSC under the terms of the business relationship between HHSC and Business Associate set forth in the Transition Services Agreement (the “Business Relationship”), subject to any limitations described in Exhibit A hereto, and provided that such Use or Disclosure would not violate the Privacy Rule if done by HHSC. Business Associate shall limit its Use, Disclosure or request of PHI, to the extent practicable, to a Limited Data Set or, if needed by Business Associate, to the Minimum Necessary amount of PHI needed to accomplish the intended purpose of the Use, Disclosure or request, in accordance with any guidance issued by HHS. Business Associate shall comply with all applicable provisions of HIPAA, the HITECH Act and the HIPAA Regulations, and shall not Use or Disclose PHI other than as permitted by this BAA or as required by law.

2.2 Disclosures to Subcontractors. Notwithstanding the foregoing, Business Associate shall ensure that any permitted Subcontractor of Business Associate that creates, receives, accesses, maintains or transmits

PHI agrees in writing to the same restrictions and conditions that apply to Business Associate regarding the Use and Disclosure and security of PHI. Business Associate shall not permit any Subcontractor that fails to abide by any material term of such agreement to create, receive, maintain, transmit, or otherwise Use or Disclose PHI. Business Associate is responsible for the acts and omissions of its delegates, subcontractors, and assignees. No PHI may be accessed, generated, hosted, downloaded, printed, stored, processed, transferred or maintained outside of the United States by Business Associate or its Subcontractors without HHSC's prior written approval. Such approval may be withheld by HHSC for any reason in its sole discretion and/or approval may be subject to additional terms and conditions.

2.3 Safeguards. Business Associate shall implement and use appropriate safeguards as necessary to prevent the Use or Disclosure of PHI in any manner that is not permitted by this BAA, as required by the Privacy Rule.

2.4 Mitigation. Business Associate shall mitigate promptly (but not longer than two (2) days), to the extent practicable, any harmful effect (a) that is known to Business Associate of a Use or Disclosure of PHI by Business Associate in violation of this BAA, the Privacy Rule, or other applicable federal or state law or (b) of a Security Incident for which Business Associate is responsible, or of which Business Associate is aware, that involves EPHI and is in violation of this BAA, the Security Rule, or other applicable federal or state law.

2.5 Access and Amendment. To enable HHSC to fulfill its obligations under 45 C.F.R. Sections 164.524 and 164.526, Business Associate shall make PHI in Designated Record Sets that are maintained by Business Associate or its Subcontractors available to HHSC for inspection, copying or amendment (at HHSC's sole cost and expense) within ten (10) calendar days of a request by HHSC. If PHI is maintained in an electronic Designated Record Set, then Business Associate shall provide HHSC with a copy of such information in electronic format in accordance with 45 C.F.R. Section 164.524 within ten (10) calendar days of a request by HHSC (at HHSC's sole cost and expense). If an Individual requests amendment of PHI directly from Business Associate or its Subcontractors, Business Associate shall notify HHSC in writing within five (5) business days of Business Associate's receipt of the request, and shall defer to, and comply with, HHSC's direction in a timely manner regarding the response to the Individual regarding the request for amendment. Per the terms of the TSA, MHS will not amend or otherwise alter any Patient Medical Records.

2.6 Accounting. Business Associate shall record and make available to HHSC Covered Disclosures of PHI by Business Associate ("Accounting Information") as necessary to enable HHSC to comply timely with its obligations under the Privacy Rule including, but not limited to, 45 C.F.R. Section 164.528. For purposes of this BAA, "Covered Disclosure" means any Disclosure of PHI subject to the Individual's right under the HIPAA Regulations to an accounting of such Disclosures. At a minimum, this Accounting Information shall include for each such Disclosure the information required by 45 C.F.R. Section 164.528(b). If an Individual requests an accounting directly from Business Associate or its Subcontractors, Business Associate must notify HHSC in writing within a reasonable period of time pursuant to the terms and conditions of the TSA, including Exhibit C to the TSA.

2.7 Government Officials. Business Associate shall make its internal practices, books and records relating to the Use and Disclosure of PHI available to the Secretary for purposes of determining HHSC's compliance with the Privacy Rule. Business Associate shall notify HHSC regarding any PHI that Business Associate provides to the Secretary concurrently with providing such PHI to the Secretary, and upon HHSC's request and at HHSC's sole cost and expense, shall provide HHSC with a duplicate copy of such PHI, unless restricted by applicable law.

2.8 Insurance. Business Associate shall maintain or cause to be maintained sufficient insurance coverage (which may include self insurance) as shall be necessary to insure Business Associate against any insurable claim or claims for damages arising under this BAA.

2.9 Compliance with the Security Rule. To the extent that Business Associate creates, receives, maintains, or transmits EPHI, Business Associate shall comply with the provisions of the Security Rule, including, without limitation, implementing administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of any EPHI that Business Associate may create, receive, maintain or transmit on behalf of HHSC; implementing policies and procedures; and complying with documentation requirements.

2.10 Reporting of Security Incidents. If the Business Associate creates, receives, maintains, or transmits EPHI, Business Associate shall appropriately report any Security Incident; provided, however, that any security incident that is a Breach of Unsecured Protected Health Information shall be reported pursuant to Section 2.13.

2.11 Reporting of Breaches of Unsecured Protected Health Information. Business Associate, following the discovery of a Breach of Unsecured Protected Health Information, subject to any law enforcement delay permitted by 45 C.F.R. Section 164.412, shall notify HHSC of the Breach immediately, but in no event later than five (5) calendar days thereafter, in the manner described or defined by the HIPAA Regulations. A Breach shall be treated as discovered by the Business Associate pursuant to the provisions of 45 C.F.R. Section 164.410(a)(2). The information included in Business Associate's notification shall be in accordance with the HIPAA Regulations, including, without limitation, 45 C.F.R. Section 164.410(c), and guidance provided by the Secretary.

2.12 Notices of Prohibited Uses or Disclosures. Except in the case of a Breach of Unsecured Protected Health Information, which shall be governed by the provisions of Section 2.13, Business Associate shall provide written notice to HHSC of any Use or Disclosure of PHI that is in violation of this BAA, the Privacy Rule, or other applicable federal or state law within five (5) business days of becoming aware of such Use or Disclosure. Business Associate shall also notify HHSC in writing within five (5) business days of receipt of any complaint that Business Associate receives concerning the handling of PHI or compliance with this BAA.

2.13 Delegated Activities. To the extent that Business Associate is to carry out one or more of HHSC's obligations under the Privacy Rule, Business Associate shall comply with the requirements of the Privacy Rule that apply to HHSC in the performance of such obligations.

3. OBLIGATIONS OF HHSC

3.1 Notice of Privacy Practices. HHSC shall notify Business Associate of limitation(s) in its notice of privacy practices in accordance with 45 C.F.R. Section 164.520, to the extent such limitation affects Business Associate's permitted Uses or Disclosures.

3.2 Individual Permission. HHSC shall notify Business Associate of changes in, or revocation of, permission by an Individual to Use or Disclose PHI, to the extent such changes affect Business Associate's permitted Uses or Disclosures, within five (5) days.

3.3 Restrictions. HHSC shall notify Business Associate of restriction(s) in the Use or Disclosure of PHI requested by an Individual and to which HHSC has agreed or with which HHSC is required to comply in accordance with 45 C.F.R. Section 164.522, to the extent such restriction affects Business Associate's permitted Uses or Disclosures, within five (5) days.

3.4 Prohibited Requests. HHSC shall not request Business Associate to Use or Disclose PHI in any manner that would not be permissible under the Privacy Rule if done by HHSC.

4. TERM AND TERMINATION

4.1 Term. This BAA shall commence as of the Effective Date and shall continue in effect during the term of the Transition Services Agreement unless sooner terminated in accordance with Section 4.2 or 4.3.

4.2 Termination Upon Termination/Expiration of Related Agreements. Unless otherwise agreed to by HHSC and MHS, this BAA will automatically terminate upon the effective date of any termination or expiration of the Transfer Agreement or Transition Services Agreement, whichever is earlier, provided that any obligation related to compliance with applicable federal and state privacy and security requirements, including, without limitation, HIPAA and the HITECH Act, shall remain in effect for so long as KP has access to the PHI of HHSC. This BAA will automatically terminate when KP ceases to perform any further KP Services for HHSC under the Transition Services Agreement and no longer has access to the PHI of HHSC under the Transition Services Agreement.

4.3 Termination for Cause by HHSC. If HHSC determines that Business Associate, or any of its Subcontractors, has breached any material provision of this BAA, which may include a pattern of activity or practice that constitutes a material breach, then HHSC, in its sole discretion, may (a) notify Business Associate of the material breach and request that it be cured and (b) if such breach has continued without cure to the reasonable satisfaction of HHSC for a period of 30 days after written notice thereof, terminate this BAA and terminate any KP Service, in whole or in part, identified as subject to potential termination in the notice of breach.

4.4 Effects of Termination. Except as provided in Section 4.4.1 or 4.4.2 below, upon termination of the Business Relationship between the parties and/or the BAA for any reason, Business Associate shall, at HHSC's direction, return or destroy all PHI (including, without limitation, EPHI) that Business Associate or its Subcontractors still maintain in any form, and shall retain no copies of such PHI. Upon HHSC's request, Business Associate shall certify in writing that any required return or destruction has occurred.

4.4.1 If Business Associate determines that return or destruction is not feasible, Business Associate shall explain to HHSC in writing why conditions make the return or destruction of such PHI not feasible and Business Associate shall retain the PHI, subject to all of the protections of this BAA, and shall make no further Use or Disclosure of the PHI, except as for those purposes that make the return or destruction of the PHI not feasible. In any event, upon termination of the Business Relationship between the parties and/or the BAA, Business Associate shall retain Accounting Information compiled by Business Associate pursuant to Section 2.8 of this BAA for the periods of time required by the Privacy Rule and the HITECH Act, and shall make such Accounting Information available to HHSC in accordance with Section 2.8 of this BAA.

4.4.2 Nothing contained in this BAA shall be construed to alter the rights and obligations of the Parties under the Transfer Agreement or the Lease, including, without limitation, Section 2.3(f) of the Transfer Agreement. Likewise, nothing contained in this BAA shall be construed to alter the rights and obligations of MHS under the Transition Services Agreement to copy, clone, or migrate Patient Medical Records into MHS applications, systems, technology platforms, or hard copy records as needed, which copies become part of MHS' medical records. Without limiting the generality of the foregoing, under no circumstances shall KP be required to return or destroy (1) any Patient Medical Records copied into any application, system, information technology platform or hard copy system used by MHS to operate the Hospitals on or after the Transfer Completion Date, (2) any Patient Medical Records used by MHS in the provision of services to patients after the Transfer Completion Date. In the event of a conflict between this BAA and the terms of the Transfer Agreement or Transition Services Agreement regarding use or copying of Patient Medical Records, the Transfer Agreement and/or Transition Services Agreement shall control.

4.5 Survival. The obligations of Business Associate under this Section 4 shall survive the termination of the Business Relationship between the parties and/or the BAA.

5. MISCELLANEOUS

5.1 Assistance. In the event of an administrative or judicial action commenced against HHSC where Business Associate may be at fault, in whole or in part, as the result of its performance under this BAA, Business Associate agrees to cooperate with HHSC in the defense against such action.

5.2 Subcontracts and Assignment. Business Associate shall not assign its rights or delegate its duties under this BAA without the express written consent of MHS.

5.3 Amendment. To the extent required by HIPAA, the HITECH Act, and any regulations promulgated thereunder, the Parties agree to modify this BAA as necessary to conform to these requirements. If any modification to this BAA is required for conformity with federal or state law or if HHSC reasonably concludes that an amendment to this BAA is required because of a change in federal or state law, or by reason of HHSC's status as a business associate of another covered entity, HHSC shall notify Business Associate of such proposed modification(s) ("Required Modifications"). Such Required Modifications shall be deemed accepted by Business Associate and this BAA so amended, if Business Associate does not, within thirty (30) calendar days following the date of the notice, deliver to MHS its written rejection of such Required Modifications. If Business Associate submits a written rejection of the Required Modification, the Parties shall negotiate in good faith to timely resolve the dispute within thirty (30) days in a reasonable manner that complies with applicable laws. Other modifications to this BAA may be made on mutual agreement of the parties.

5.4 Ambiguity. Any ambiguity in this BAA relating to the Use and Disclosure of PHI shall be resolved in favor of a meaning that furthers the obligations to protect the privacy and security of the PHI, whether electronic or other medium, in accordance with HIPAA and the HIPAA Regulations.

5.5 Compliance with other Laws. In addition to HIPAA and all applicable HIPAA Regulations, Business Associate shall comply with all applicable state and federal security and privacy laws.

5.6 Third Party Beneficiaries. Except as expressly provided for in this BAA (with respect to the KP Entities) or as required by law, there are no third party beneficiaries to this BAA.

5.7 Counterparts. This BAA and any exhibits hereto may be executed in one or more counterparts; each counterpart shall be deemed an original.

5.8 Notices. All notices required or permitted to be given under this BAA shall be in writing and will be deemed effectively delivered when personally delivered; when actually received by nationally recognized overnight delivery service; or five days after being deposited in the United States mail, with postage prepaid thereon, by certified or registered mail, return receipt requested, addressed as follows:

Business Associate:

Maui Health System, a Kaiser Foundation
Hospitals, LLC
3288 Moanalua Road
Honolulu, Hawaii 96819
Attention: President/CEO and Chairman of the
Board

HHSC:

Hawaii Health Systems Corporation
3675 Kilauea Avenue
Honolulu, Hawaii 96816
Attn: Chief Executive Officer

With copies to (which shall not constitute notice):

Kaiser Foundation Hospitals/Health Plan
711 Kapiolani Blvd.
Honolulu, Hawaii 96813
Attention: Vice President & Regional Counsel

National Compliance, Ethics & Integrity Office
Kaiser Permanente
One Kaiser Plaza, 12 Floor
Oakland, CA 94612
Attn: Scott Morgan,
National Privacy and Security Compliance Officer
Email: scott.morgan@kp.org

With a copy to (which shall not constitute notice):

Hawaii Health Systems Corporation
3675 Kilauea Avenue
Honolulu, Hawaii 96816
Attn: General Counsel

The above addresses may be changed by giving notice in the manner provided for above.

*[Remainder of Page Intentionally Left Blank;
Signatures Next Page]*

IN WITNESS WHEREOF, the parties hereto have duly executed this BAA as of the date set forth below.

Maui Health System, A Kaiser Foundation Hospitals LLC **Hawaii Health Systems Corporation**

By: Mary Ann Barnes

By: _____

Name: Mary Ann Barnes

Name: Linda Rosen, M.D., M.P.H.

Title: Chairperson of the Board

Title: Chief Executive Officer

Date: 6/27/17

Date: _____

IN WITNESS WHEREOF, the parties hereto have duly executed this BAA as of the date set forth below.

Maui Health System, A Kaiser Foundation Hospitals LLC **Hawaii Health Systems Corporation**

By: _____

By:  _____

Name: Mary Ann Barnes

Name: Linda Rosen, M.D., M.P.H.

Title: Chairperson of the Board

Title: Chief Executive Officer

Date: _____

Date: _____



EXHIBIT A
to
BUSINESS ASSOCIATE AGREEMENT

Business Associate is permitted to Use and/or Disclose PHI only as provided below:

Business Associate may only Use and/or Disclose PHI as necessary to fulfill its obligations to provide KP Services under the Transition Services Agreement. Business Associate may not Use or Disclose PHI for any other purpose. The Parties recognize and agree that the Record Management Services require Business Associate to Disclose PHI as the custodian of the Patient Medical Records for (1) release of Patient Medical Records in accordance with Legal Requirements, and (2) maintaining and responding to requests for an accounting of disclosures of PHI.