



NORTH CENTRAL TEXAS
TRAUMA REGIONAL ADVISORY COUNCIL

**NORTH CENTRAL TEXAS TRAUMA REGIONAL ADVISORY COUNCIL
REGIONAL PROGRAMS PARTICIPATION AGREEMENT**

THIS AGREEMENT is made this 14 day of March, 2016 ("Effective Date"), by and among North Central Texas Trauma Regional Advisory Council, a 501(c) (3) Corporation organized under the laws of the State of Texas (hereinafter known as "NCTTRAC") and City of Mesquite, a State Municipal Organization organized under the laws of the State of Texas (hereinafter known as "AGENCY"). NCTTRAC and AGENCY shall each be known as a Party and collectively be known herein as "the Parties."

WHEREAS, NCTTRAC is a Texas Regional Advisory Council whose activities are generally described as: an organized group of healthcare entities and other concerned citizens who have an interest in improving and organizing trauma care within a specified Trauma Service Area (TSA);

WHEREAS, AGENCY provides healthcare services to patients and its activities are generally described as Emergency Medical Services;

WHEREAS, the Parties wish to enter into a relationship;

WHEREAS, the nature of the contractual relationship between NCTTRAC and AGENCY may involve the exchange of Protected Health Information ("PHI") and Sensitive Personal Information ("SPI") as those terms are defined under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") as amended by Health Information Technology for Economic and Clinical Health Act of 2009 ("HITECH"), including all pertinent regulations issued by the Department of Health and Human Services ("HHS") including Breach Notification rule and Security rule; and Texas Medical Records Privacy Act "MRPA", as codified in Section 181 et seq. of the Texas Health and Safety Code and as implemented through regulations including the Standards Relating to the Electronic Exchange of Health Information, codified at Title 1, Section 390.1 et seq. of the Texas Administrative Code (altogether, "MRPA").

The premises having been considered and with acknowledgment of the mutual promises and of other good and valuable consideration herein contained, the Parties, intending to be legally bound, hereby agree as follows:

A. Participation, Requirements, and Use

1. Participation.

A. AGENCY is entering into this Agreement and Exhibit A (End Users List) with NCTTRAC for the collection, storage, aggregation for reporting purposes, disclosure as herein described, and use of certain patient data (hereafter "Program Data") as part of NCTTRAC's regional registry programs ("Program(s)"). All or portions of the patient data are PHI and/or SPI under HIPAA. In order to support AGENCY's health care operations, AGENCY has elected to request access, and NCTTRAC hereby grants a license to AGENCY for access, to the NCTTRAC regional registry, patient tracking and related services offered by NCTTRAC ("NCTTRAC Programs"). As a participant in the NCTTRAC Programs, AGENCY agrees to adhere to the terms of this Agreement including terms related to use of the Programs.

2. Requirements. AGENCY agrees to comply with the requirements for the NCTTRAC Programs as published by NCTTRAC from time to time, so long as they are not inconsistent with this Agreement or local, state or federal law, and prominently display the appropriate proprietary and confidentiality notices in all copies of reports and analyses produced using data maintained in the regional registry Program.

3. Confidentiality, Integrity and Availability of Program Data. Program Data includes PHI and/or SPI of the members of the regional registry. Program Data will be made available to AGENCY subject to each of the following requirements:

- a. Except as otherwise provided herein, NCTTRAC will only collect data from and provide data to AGENCY and other hospitals, health care organizations, and EMS agencies that agree to exchange data in NCTTRAC Programs on terms substantially similar to this Agreement and in accordance with the terms of this Agreement and applicable law. In all instances involving potential use of any PHI and/or SPI, the Parties shall strictly comply with HIPAA, HITECH, state law and, to the extent applicable, ensure that the minimum necessary rules under each are followed.
- b. AGENCY is permitted to use Program Data and reports consisting of aggregated data of participating organizations strictly for the purposes of healthcare operations for all members of the regional registry; provided, however, AGENCY is permitted to use AGENCY's own data without regard to such restriction.
- c. AGENCY and NCTTRAC agree to establish and follow applicable procedures to protect the confidentiality of the Program Data.
- d. Except as provided below, neither Party shall release nor disclose Program Data to any third party that is not a participating agency with NCTTRAC; provided, however, AGENCY may release or disclose AGENCY's own data without regard to such restriction. NCTTRAC shall be permitted to share Program Data with the State of Texas and local healthcare and governmental entities as may be required by state law for purposes of responding to state or regional emergency events and with other regional registries as may be agreed upon by NCTTRAC and its members. AGENCY and NCTTRAC shall not use or further disclose any Program Data except as permitted by this Agreement or as otherwise required by applicable law.
- e. Each Party shall educate its employees and authorized representatives who have access to Program Data on the obligation to maintain the confidentiality of the Program Data and agree to ensure that any employee or authorized representative, including subcontractors, having such access will adhere to the same restrictions and conditions that apply to the Parties with respect to the Program Data until such data is destroyed. This provision extends beyond the life of this Agreement.
- f. Agency and NCTTRAC shall use appropriate administrative, physical, and technical safeguards to prevent the use or disclosure of the Program Data other than as provided by this Agreement and shall mark or otherwise designate the Program Data as confidential in AGENCY's and NCTTRAC's policies and procedures related to the access, use, and disclosure of confidential data and information and all contracts or other agreements related to the AGENCY's and NCTTRAC's use or disclosure of the Program Data.
- g. Agency and NCTTRAC shall report to the other Party any Electronic PHI Security Incidents, use or disclosure of the Program Data not permitted by this Agreement of which AGENCY or NCTTRAC becomes aware. NCTTRAC will cooperate with AGENCY to determine whether a breach of PHI or SPI has occurred. If a breach has been determined, AGENCY will follow applicable breach notification requirements under federal and state law and as provided by the Business Associate Agreement between the Parties.
- h. AGENCY and NCTTRAC will not nor permit others to copy, sell, rent, license, lease, loan, or otherwise grant access to the Program Data to any third party except as provided herein; provided, however, AGENCY may grant access to AGENCY's own data without regard to such restriction.
- i. AGENCY will make no statement nor give permission to others to make statements indicating or suggesting that interpretations drawn from the data are those of NCTTRAC, or any other hospital or health care organization participating in NCTTRAC's Programs, or that make any inferences whatsoever.
- j. NCTTRAC may use PHI and SPI received from any participating organization only for

Program purposes as set forth in this Agreement and strictly in compliance with the Business Associate Agreement between the Parties.

- k. NCTTRAC is authorized to de-identify PHI and SPI contained within the Program Data as it deems necessary and appropriate. NCTTRAC will make de-identified data available for participants as appropriate and abiding by HIPAA and HITECH regulations for Protected Health Information (PHI) and Sensitive Personal Information (SPI) promulgated thereunder and applicable Texas law, including, where appropriate, combining de-identified data from multiple agencies.

4. Organization's Request for Specific Disclosure of Program Data. In the event that Agency desires to use or disclose the Program Data or any portion thereof (other than Agency's own data) in a manner not expressly permitted under this Agreement, or otherwise to any unauthorized third party, Agency may submit to NCTTRAC a written request detailing the nature of the disclosure or use, the dates/times and scope of the disclosure or use, the names of the persons to whom such data will be disclosed, and such other information as may be pertinent to such request. Agency acknowledges that NCTTRAC shall have the right, in its sole discretion, to accept or reject any written request and to deny or authorize different levels of data use or disclosure based on a specific written request from Agency. Such determination shall be binding upon Agency and NCTTRAC. Any such written request received by NCTTRAC shall be administered by the Executive Director and/or the Privacy Officer in accordance with applicable NCTTRAC procedure. In the event NCTTRAC or any other hospitals, health care organizations, or EMS agencies participating in the NCTTRAC Programs desires to use or disclose Agency's data or any portion thereof in a manner not specifically authorized by Agency under this Agreement to any third party, NCTTRAC may submit to Agency a written request detailing the nature of the disclosure or use, the dates/time and scope of the disclosure or use, the names of the persons to whom Agency's data will be disclosed and such other information as may be pertinent to such request. NCTTRAC acknowledges that Agency shall have the right, in its sole discretion, to accept or reject any written request and to deny or authorize different levels of use or disclosure of Agency's data based on specific written request from NCTTRAC and such determination shall be binding upon NCTTRAC.

5. Access To Program Data.

- a. AGENCY administrative access is restricted to such persons (each an "Account Manager" or "End User") designated by AGENCY and authorized by NCTTRAC on Exhibit A to this Agreement.
- b. Upon execution of this Agreement and appropriate NCTTRAC training, NCTTRAC will assign each Account Manager a unique User Name and Password for access to and use of the Program Data. The password may not be shared. AGENCY agrees that password confidentiality will be maintained by its Account Manager.
- c. Any change in AGENCY's Account Manager must be reported to NCTTRAC.
 - 1) AGENCY is responsible for managing its END USERS and insuring that they strictly comply with the terms of this Agreement, the Business Associate Agreement between the Parties as well as applicable federal and state laws regarding the use and sharing of PHI and SPI.
 - 2) AGENCY is responsible for managing END USERS access to Program Data and where necessary, disabling AGENCY's End Users access by notifying NCTTRAC. AGENCY will not create generic users unless it receives written approval to do so from the NCTTRAC Privacy Officer.
 - 3) AGENCY shall be responsible for attesting to the security and confidentiality of usernames and passwords for End Users and shall adopt reasonable standards to verify user identities.
 - 4) AGENCY acknowledges that it will be fully responsible, with respect to AGENCY's PHI

and SPI, for all liabilities incurred through use of any username and password (whether lawful or unlawful) and that any actions completed thereunder will be deemed to have been lawfully completed by AGENCY, except to the extent that such liabilities arise after AGENCY has notified NCTTRAC to disable an Account Manager or End User's access.

- 5) AGENCY and NCTTRAC will use its best efforts to implement and deploy security features, procedures and technologies that will, in such Party's reasonable judgment, provide sufficient protection to data from unauthorized use, dissemination, or access.
- 6) To obtain access to NCTTRAC Programs, including the regional registry, AGENCY must complete and return to NCTTRAC this executed Agreement and the executed Business Associate Agreement.
- 7) NCTTRAC may in its sole discretion disable one or more of AGENCY's END USERS if it determines that such person is accessing the Program Data in a manner not allowed by this Agreement or standards/policies adopted by NCTTRAC or such person's use of the NCTTRAC Programs may result in an unauthorized disclosure of PHI or SPI.

6. Warranties/Indemnification.

- a. Authority. Each Party represents and warrants that it has the power and authority to grant, make, execute, deliver, and perform this Agreement and its rights and obligations hereunder, and that the execution of this Agreement will not violate or constitute a breach of any of its contractual obligations with any third party.
- b. Program Data Accuracy. NCTTRAC will use commercially reasonable efforts to ensure that the data input and maintenance of the Programs is not corrupted.
- c. Quality of Service. NCTTRAC warrants that all services performed by NCTTRAC will be of professional quality conforming to generally accepted computer industry practices.
- d. Indemnification. NCTTRAC warrants that all PHI and SPI received from AGENCY shall remain protected in accordance with all applicable federal and state laws and regulations. In the event of a breach of any PHI and/or SPI that is not secured through the use of a technology or methodology specified by the Secretary of Health and Human Services in guidance issued under section 13402(h)(2) of the HITECH Act on the HHS Web site, NCTTRAC will indemnify the AGENCY for all reasonable costs associated with the breach including the cost of notifying patients, any credit monitoring offered to patients whose information may have been compromised, and any litigation costs to defend and/or settle claims associated with the breach.

7. Ownership of Data and Programs. As between NCTTRAC and AGENCY, AGENCY shall retain ownership of all intellectual property rights in and to AGENCY's data subject to the rights therein granted to NCTTRAC in this Agreement, and NCTTRAC shall retain ownership of all intellectual property rights in and to the NCTTRAC Programs and any other software, technology, and equipment made available to AGENCY and/or created, developed or used in the performance of services by NCTTRAC under this Agreement subject to the limited rights granted under this Agreement. Neither Party shall take any action in contravention of the other Party's ownership rights. Except as expressly provided in this Agreement, neither Party shall, nor shall it permit or allow others to, reproduce, copy, market, sell, distribute, transfer, translate, modify, adapt, disassemble, decompile, or reverse engineer the NCTTRAC Programs, or any such software, technology, or equipment of NCTTRAC or obtain possession of any source code or other non-public technical materials relating thereto. There are no implied licenses under this Agreement, and any rights not expressly granted hereunder are reserved. Neither Party shall exceed the scope of the express rights granted hereunder.

B. NCTTRAC and AGENCY Responsibilities and Assurances.

1. Notice of Security Incident or Breach. If NCTTRAC becomes aware of any security incident; breach of PHI or SPI; unauthorized use or disclosure of PHI or SPI; or similar event, NCTTRAC will notify AGENCY as soon as possible, but in any event within ten (10) business days of such awareness and will cooperate with all such AGENCY's reasonable request for information and assistance in remedying the event as well as the effects of the event.
2. Breach Notification. If AGENCY's data held by NCTTRAC is breached and (i) such breach is the result of negligence on the part of NCTTRAC and (ii) a breach notification is required under state or federal law, NCTTRAC accepts responsibility for all reasonable costs associated with such breach, including, but not limited to the cost of investigating, providing all legally required notices and the costs of remedying the effects of the breach on all patients that may be affected by the breach. For purposes of this Agreement, the term "breach" means any unauthorized, acquisition, access, use, or disclosure of PHI and /or SPI.
3. Subcontractors. If NCTTRAC uses any agent or subcontractor, NCTTRAC will verify that the agent or subcontractor is eligible to perform the services and will enter into a Business Associate Agreement with such agent or subcontractor that holds agent or subcontractor to the same restrictions that apply to NCTTRAC.
4. Compliance with AGENCY Policy and Procedures. NCTTRAC will only use or disclose PHI and SPI in accordance with AGENCY's HIPAA Policy and Procedures and its related Notice of Privacy Practices, copies of which AGENCY agrees to furnish NCTTRAC upon execution of this Agreement.
5. Compliance with Federal and State Laws. NCTTRAC will not use or disclose any PHI or SPI in any manner that would violate any applicable federal or state law or regulation if done by AGENCY.
6. Maintain Log of all Uses and Disclosures. NCTTRAC shall provide AGENCY a complete log of all uses and disclosures of PHI and SPI held by NCTTRAC, as requested. If NCTTRAC makes disclosures of PHI or SPI, NCTTRAC shall document the disclosures and information related to such disclosures as would be required for AGENCY to respond to a request by an Individual for an accounting of disclosures of PHI or SPI in accordance with 45 CFR 164.528. NCTTRAC shall provide to AGENCY, within a timeframe mutually agreed to by AGENCY and NCTTRAC, information collected in accordance with this Section, to permit AGENCY to respond to a request by an Individual for an accounting of disclosures of PHI or SPI. If any Individual requests access to the foregoing information directly from NCTTRAC, NCTTRAC shall forward such request to AGENCY so that AGENCY can comply with the request.
7. Internal Books and Records. NCTTRAC agrees to make NCTTRAC's internal practices, books, and records relating to the use and disclosure of PHI and SPI available upon request.
8. Records Available to HHS. NCTTRAC will make its information relating to uses and disclosures available to the Secretary of HHS as required by law.
9. Disposition of Program Data by NCTTRAC. After thirty (30) days written notice from NCTTRAC to AGENCY, NCTTRAC may, in its sole discretion, delete, destroy or return to AGENCY all or any portion of Program Data furnished by AGENCY to NCTTRAC under one or more of the NCTTRAC Programs. In such event, NCTTRAC shall comply strictly with federal and state laws regarding disposition of PHI and SPI.
10. AGENCY Data Not Requested. AGENCY agrees to refrain from sending to NCTTRAC data not specifically requested by NCTTRAC for use within its Programs. If NCTTRAC receives AGENCY

data not requested by NCTTRAC, NCTTRAC shall have the authority after reasonable notice to AGENCY to return, destroy or delete such data.

11. Patient Consents. AGENCY represents and warrants to NCTTRAC that AGENCY has properly secured written patient consents from all of AGENCY's patients for the healthcare data that is shared with NCTTRAC by AGENCY.
12. NCTTRAC Policies and Procedures. AGENCY agrees to strictly comply with all written procedures and policies adopted by NCTTRAC from time to time with respect to the use of its Programs and the processing, sharing and disclosure of aggregated PHI and SPI.

C. Term and Termination.

1. Term of Agreement. The Term of this Agreement shall be effective as of the Effective Date and shall continue until terminated in accordance with the termination provisions in this Section.
2. Termination for Cause. Upon a Party's knowledge of a material breach by the other Party, the Party shall either:
 - a. Provide an opportunity for the breaching Party to cure the breach or end the violation, and terminate this Agreement if the breaching Party does not cure the breach or end the violation within the time specified by the non-breaching Party; or
 - b. Immediately terminate this Agreement if the breaching Party has breached a material term of this Agreement and cure is not possible.
13. Termination without Cause. Either Party may terminate this Agreement at any time without cause upon thirty (30) days prior written notice to the other Party.
14. Return of Program Data. Upon termination all data submitted by AGENCY during the term of this Agreement shall be either promptly returned to AGENCY or destroyed and NCTTRAC shall not retain any copies of data.
15. AGENCY's Right of Termination. If for any reason, AGENCY becomes aware of any violation of this Agreement, including, but not limited to, NCTTRAC's responsibilities under this Agreement and such violation is not cured after reasonable notice and opportunity to cure, AGENCY may terminate this Agreement.

D. Miscellaneous.

1. State Law. If state law applicable to the relationship between AGENCY and NCTTRAC contains additional or more stringent requirements than federal law regarding any aspect of PHI privacy, then the Parties agree to comply with the higher standard contained in applicable state law.
2. Consideration. Each Party recognizes that the promises it has made in this Agreement shall, henceforth, be relied upon by the other Party in choosing to continue or commence a business relationship with the other Party.
3. Modification. This Agreement may only be modified through a writing signed by the Parties and, thus, no oral modification hereof shall be permitted. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for the Parties to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996 as amended by the Health Information Technology for Economic and Clinical Health

Act of 2009, and other changes as may be required by federal or state law.

4. Notice to NCTTRAC. Any notice required under this Agreement to be given NCTTRAC shall be made in writing to:

North Central Texas Trauma Regional Advisory Council
Attn: Executive Director
600 Six Flags Dr., Suite 160
Arlington, Texas 76011

With copy to:

William P. Remington
The Remington Law Group, PLLC
1717 McKinney, Suite 700
Dallas, Texas 75202

5. Notice to AGENCY. Any notice required under this Agreement to be given AGENCY shall be made in writing to:

Mesquite Fire Department

Attn: EMS Division

1515 N. Galloway Avenue

Mesquite, TX 75149

With copy to:

6. Independent Contractor. NCTTRAC's status shall be that of an independent contractor and not an agent, servant, employee, or representative of AGENCY in the performance of the services under this Agreement. NCTTRAC shall exercise independent judgment in performing services under this Agreement and is solely responsible for setting working hours, scheduling or prioritizing the work flow and determining how the work is to be performed. No term or provision of this Agreement or act of NCTTRAC in the performance of this Agreement shall be construed as making NCTTRAC the agent, servant or employee of AGENCY, or making NCTTRAC or any of its employees eligible for the fringe benefits, such as retirement, insurance and worker's compensation, which AGENCY provides its employees.
7. Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of Texas without regard to choice of law.
8. Assignment. Neither Party may assign, transfer, delegate, or sublicense any of its rights or obligations under this Agreement without the prior written consent of the other Party.
9. Entire Agreement. This Agreement constitutes the complete agreement between the Parties relating to the matters specified in this Agreement, and supersedes all prior representations or agreements, whether oral or written, with respect to such matters. No oral modification or waiver of any of the provisions of this Agreement shall be binding on either Party.

IN WITNESS WHEREOF and acknowledging acceptance and agreement of the foregoing, the Parties affix their signatures hereto.

NCTTRAC

North Central Texas Trauma Regional
Advisory Council



Signature

Hendrik J. Antevisse

Printed Name


Executive Director

Date

17 MAR 16

AGENCY

City of Mesquite
Mesquite Fire Department



Signature

Berman Mark Kerby

Printed Name

Title Fire Chief

03/11/2016

Date

APPROVED AS TO FORM:

BY:

EXHIBIT A

END USERS LIST

Complete the information on Agency personnel who are to have access to the online NCTTRAC Regional Registry. Copy and attach additional User List as needed.

Agency/Institution: City of Mesquite, Mesquite Fire Department

Address 1: 1515 N. Galloway Avenue

Address 2:

City: Mesquite

State: TX

Zip Code: 75149

System Role: Account Manager

Name: Berman Mark Kerby

Credentials: State Licensed Paramedic

Position: Fire Chief

E-mail address: mkerby@mesquitefire.org

[Mandatory – ALL personnel must have a unique NON-SHARED e-mail address]

Direct Phone line or extension: 972-216-6304

Account Manager Signature: 

System Role: User

Name: Bruce Kunz

Credentials: State Certified EMT-B

Position: Deputy Chief – EMS/Training

E-mail address: bkunz@mesquitefire.org

[Mandatory – ALL personnel must have a unique NON-SHARED e-mail address]

Direct Phone line or extension: 972-216-6465

User Signature: 

System Role: User

Name: Melissa Osborne

Credentials: None

Position: Public Safety Operations Analyst

E-mail address: mosborne@mesquitefire.org

[Mandatory – ALL personnel must have a unique NON-SHARED e-mail address]

Direct Phone line or extension: 972-216-8135

User Signature: 

Agency/Institution:

System Role: **User**

Name: Shelley Lovato

Credentials: TX RN, TDSHS Paramedic

Position: Fire Department Nurse

E-mail address: slovato@mesquitefire.org

[Mandatory – ALL personnel must have a unique NON-SHARED e-mail address]

Direct Phone line or extension: 972-329-8545

User Signature: 

System Role: **User**

Name:

Credentials:

Position:

E-mail address:

[Mandatory – ALL personnel must have a unique NON-SHARED e-mail address]

Direct Phone line or extension:

User Signature:

System Role: **User**

Name:

Credentials:

Position:

E-mail address:

[Mandatory – ALL personnel must have a unique NON-SHARED e-mail address]

Direct Phone line or extension:

User Signature:

System Role: **User**

Name:

Credentials:

Position:

E-mail address:

[Mandatory – ALL personnel must have a unique NON-SHARED e-mail address]

Direct Phone line or extension:

User Signature: