

**HHSC
STATE OF TEXAS
COUNTY OF TRAVIS**

**AGREEMENT
BETWEEN THE
TEXAS HEALTH AND HUMAN SERVICES COMMISSION
AND
KELLER INDEPENDENT SCHOOL DISTRICT**

BUSINESS ASSOCIATE AGREEMENT

Compliance with Health Insurance Portability and Accountability Act of 1996
("HIPAA") (42 U.S.C. §§1320d-1320d-8)

This Business Associate Agreement relates to the Agreement between the Health and Human Services Commission ("HHSC") and Keller Independent School District ("CONTRACTOR"). It is incorporated by reference into the Intergovernmental Agreement.

(a) Background.

(1) All terms used in this Business Associate Agreement that are not otherwise defined in this Agreement have the same meaning as those terms in the Privacy Rule, 45 C.F.R. parts 160 and 164;

(2) Under the terms of this Agreement, HHSC may provide or make available to CONTRACTOR, or CONTRACTOR may create or receive on behalf of HHSC, certain Confidential Information that is and must be afforded special treatment and protection under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") (42 U.S.C. §§1320d-1320d-8) in conjunction with goods or services that are being provided to HHSC by CONTRACTOR;

(3) CONTRACTOR will have access to or receive from HHSC or create receive on behalf of HHSC certain electronic protected health information that must be safeguarded in accordance with this Agreement and the security rules adopted by the U.S. Department of Health and Human Services (HHS) under HIPAA, 45 C.F.R. §§ 164.302-.318. CONTRACTOR is a Business Associate as that term is defined in the HIPAA security rules, 45 C.F.R. § 160.103.

(4) CONTRACTOR is a Business Associate of HHSC.

(5) The obligations of CONTRACTOR under this section are in addition to the duties of CONTRACTOR with respect to Confidential Information described elsewhere in this Agreement.

(b) Uses and Disclosures.

Except as otherwise limited by this Agreement, CONTRACTOR may:

(1) Use or disclose Protected Health Information to perform the Services and accomplish the purposes of this Agreement, provided that:

(A) Such use or disclosure would not violate the Privacy Rule if the disclosure were made by HHSC; and

(B) Such use or disclosure is limited to the minimum necessary to accomplish the purposes of the use or disclosure;

(2) Use Protected Health Information for the proper management and administration of CONTRACTOR or to carry out CONTRACTOR's legal responsibilities;

(3) Disclose Protected Health Information for the proper management and administration of CONTRACTOR or to carry out CONTRACTOR's legal responsibilities if:

(A) Disclosure is required by law; or

(B) CONTRACTOR obtains assurances from the person to whom the information is disclosed that the person will:

(i) Maintain the confidentiality of the Protected Health Information;

(ii) Use or further disclose the information only as required by law or for the purpose for which it was disclosed to the person; and

(iii) Notify CONTRACTOR of any breaches of confidentiality of which the person is aware; and

(4) Use Protected Health Information to provide data aggregation services to HHSC, as that term is defined at 45 C.F.R. §164.501 and permitted by 45 C.F.R. §164.504(e)(2)(i)(B).

(c) CONTRACTOR's commitment and obligations.

CONTRACTOR agrees that it will:

(1) Not use or disclose Protected Health Information provided by, made available by, or created or received on behalf of HHSC other than as permitted or required by this Agreement or as required by law;

(2) Establish and maintain appropriate safeguards to prevent any use or disclosure of Protected Health Information other than as provided for by this Agreement;

(3) Have procedures in place for mitigating, to the maximum extent practicable, any harmful effect of a use or disclosure of Protected Health Information that is contrary to this Agreement or the Privacy Rule;

(4) Immediately report to HHSC any use or disclosure of Protected Health Information not provided for or allowed by this Agreement of which CONTRACTOR becomes aware;

(5) Enter into a subcontract anytime CONTRACTOR proposes to provide or make available Protected Health Information to any subcontractor or agent. Such subcontract or agreement must:

(A) Contain the same terms, conditions, and restrictions on the use and disclosure of Protected Health Information and restrictions on the security of information as contained in this Agreement; and

(B) Be approved as to the form of the terms, conditions, and restrictions by HHSC prior to entering into any such agreement;

(6) Make Protected Health Information in a designated records set available to HHSC or, as directed by HHSC, to the subject of the Protected Health Information, in compliance with the requirements of 45 C.F.R. §164.524.

(7) Make Protected Health Information in a designated records set available for amendment and will incorporate any amendments to this information that HHSC directs or agrees to pursuant to 45 C.F.R. §164.526.

(8) Document and make available to HHSC the Protected Health Information required to provide an accounting of disclosures, in accordance with 45 C.F.R. §164.528.

(9) Make internal practices, books, and records relating to the use or disclosure of Protected Health Information received from, or created or received by CONTRACTOR on behalf of HHSC, available to the Secretary of Health and Human Services or the Secretary's designee for purposes of determining compliance with the privacy regulations.

(10) Return, destroy, or continue to maintain appropriate safeguards for all Protected Health Information received from HHSC or created or received on behalf of HHSC once CONTRACTOR finishes providing goods or services under this Agreement:

(A) If CONTRACTOR destroys the information, it must certify to HHSC that the information has been destroyed;

(B) CONTRACTOR may not elect to destroy information that must be retained under federal or state law; and

(C) CONTRACTOR must maintain appropriate safeguards for the information as long as CONTRACTOR has such Protected Health Information;

(11) Develop and implement a system of sanctions for any employee, subcontractor, or agent who violates this Agreement or the Privacy Rule.

(12) Implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic protected health information that it creates, receives, maintains, or transmits on behalf of HHSC as required by 45 C.F.R. §§ 164.302-.318.

(13) Immediately report to HHSC any security incident of which it becomes aware.

(14) Make internal practices, books, and records relating to the security of information received from or created or received by CONTRACTOR on behalf of HHSC available to the Secretary of Health and Human Services or the Secretary's designee for purposes of determining compliance with the security rules.

(15) Develop and implement a system of sanctions for any employee, subcontractor or agent who violates this agreement or the security rules.

(d) *Ownership of Protected Health Information.*

(1) The Protected Health Information shall be and remain the property of HHSC.

(2) CONTRACTOR agrees it acquires no title or rights to the information, including any de-identified information, as a result of this Agreement.

(e) *Injunctive relief; survival of terms.*

(1) Notwithstanding any rights or remedies provided for in the contract, HHSC retains all rights to seek injunctive relief to prevent or stop the unauthorized use or disclosure of Protected Health Information or a violation of the security rules by CONTRACTOR or any agent, subcontractor, or third party that received information from CONTRACTOR.

(2) The duties and obligations imposed on CONTRACTOR under this section of this Agreement will survive the expiration of the Agreement until all Protected Health Information provided by HHSC to CONTRACTOR, or created or received by CONTRACTOR on behalf of HHSC, is destroyed or returned to HHSC.

(f) *Definitions.*

(1) For purposes of this Business Associate Agreement: a "Business Associate" has the meaning given the term under 45 C.F.R. §160.103.

(2) For purposes of this Business Associate Agreement, "Protected Health Information" has the meaning given the term in 45 C.F.R. §164.501, limited to the information created or received by CONTRACTOR from or on behalf of HHSC.

(g) *General Terms*

(1) Except as otherwise specified in the contract, if any legal action or other proceeding is brought for the enforcement of the contract, or because of an alleged dispute, breach, default, misrepresentation, or injunctive action, in connection with any of the provisions of the contract, each party will bear their own legal expenses and all other costs incurred in that action or proceeding.

(2) The contract consists of this document and the base contract and constitutes the entire agreement between the parties. There are no understandings or agreements relating to this agreement or the base contract that are not fully expressed in the contract and no change, waiver, or discharge of obligations arising under the contract will be valid unless in writing and executed by the party against whom such change, waiver, or discharge is sought to be enforced.

(3) Any violation by CONTRACTOR of a material term of this agreement will be considered a breach of contract if CONTRACTOR knew of the violation and failed to immediately take reasonable steps to cure it.

(4) HHSC has a right to immediately terminate this agreement and the base contract and seek relief in a court of competent jurisdiction in Travis County, Texas, if HHSC determines that CONTRACTOR has violated a material term of this agreement.

SIGNED this _____ day of _____, 2007.

CONTRACTOR

By: _____

Printed Name and Title