

**DATA SHARING AGREEMENT BETWEEN
CHILDREN’S OPTIMAL HEALTH
AND**

This Data Sharing Agreement (“Agreement”) is entered into effective as of _____, 20__ (“Effective Date”), by and between Children’s Optimal Health, (“Recipient”) and _____ (“_____”). The purpose of this Agreement is to provide Recipient with access to a Limited Data Set (“LDS”) for use in its research analysis, in accordance with the Family Education Rights and Privacy Act of 1974 (“FERPA”), the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), and the Privacy and Security Regulations promulgated pursuant thereto.

WHEREAS, Recipient performs certain research functions and desires to identify trends, gaps, and opportunities (“Research Purposes”) to promote the optimal provision of health services; and

WHEREAS, _____ seeks to promote the optimal provision of health services for its _____; and

WHEREAS, the parties hereto desire to execute an agreement in which _____ agrees to disclose a Limited Data Set (“LDS”), as defined herein, to Recipient for Recipient’s Research Purposes and Recipient agrees to limit its use of the LDS and to protect the LDS according to the terms and conditions of this Agreement and, as may be amended from time to time.

NOW, THEREFORE, in consideration of the mutual agreements, covenants, terms, and conditions herein contained, Recipient and _____ agree as follows:

1. Preparation and Protection of the LDS. _____ shall prepare and furnish to Recipient a LDS in an electronic format in accordance with HIPAA Privacy and Security Regulations. Recipient is not authorized to sell, transfer, or convey the LDS or its rights under this Agreement to any other person. Recipient further acknowledges that the LDS may include Protected Health Information that is protected from use or disclosure under HIPAA, and confidential information that is protected from disclosure under Texas law. While in possession of the LDS, only persons authorized to analyze the LDS for the Research Purposes will be granted access. Furthermore, the LDS will be stored and handled in a secure manner.

2. Minimum Necessary Data Fields in the LDS. In preparing the LDS, _____ shall generate and maintain a data translation table to include an _____-generated unique Children’s Optimal Health ID (“COH-ID”). Recipient shall provide _____ with any technical assistance needed in developing unique COH-IDs. _____ shall also provide a data file to Recipient that includes de-identified data fields, which shall be mutually agreed upon in

writing and will become an addendum to this Agreement. After the exchange of the initial data file to Recipient, _____ may provide to Recipient additional data files which include additional de-identified data fields. Any such additional de-identified data fields shall be mutually agreed upon in writing and will become an addendum to this Agreement. Recipient, its agents, employees, and subcontractors shall request, use, and disclose only the minimum amount of information necessary to accomplish the research purposes.

3. Responsibilities of Recipient. Recipient agrees:

a. To be the custodian of all de-identified data provided by _____;

b. To use or disclose the LDS only as permitted by this Agreement or as required by law, and to ensure that Recipient's directors, officers, employees, contractors, and agents do not use or disclose the LDS in any manner that would constitute a violation of the Privacy and Security Regulations if used by _____ or its Members;

c. Not to use the LDS in such a way as to identify any individual or any of the Personal Identifiers under the FERPA and HIPAA Privacy Regulations;

d. To maintain and secure the LDS pursuant to any applicable privacy and security regulations;

e. To use appropriate safeguards to prevent use or disclosure of the LDS other than as permitted by this Agreement or required by law, and upon request from _____, provide _____ such information concerning such safeguards as _____ may from time to time request;

f. To maintain a comprehensive written information privacy and security program that includes administrative, technical, and physical safeguards appropriate to the size and complexity of Recipient's operations and the Research Purposes;

g. To report to _____ in writing any use or disclosure of the LDS that is not permitted by this Agreement or required by law within fourteen (14) days of becoming aware of any such violation;

h. To obtain written permission from _____ before providing access to the LDS to any subcontractor or agent whose access to the LDS is not expressly contemplated by this Agreement, and to require any such subcontractors or agents that receive or have access to the LDS to agree, in writing, to the same restrictions and conditions on the use and/or disclosure of the LDS that apply to Recipient under this Agreement;

i. Not to use the information in the LDS to identify or contact the individuals who are the subject of the research;

j. To return to _____ and/or destroy all originals and copies of the LDS, upon termination of this Agreement for whatever reason. In the event that the originals are destroyed, Recipient will provide _____ with a written, signed statement indicating the date and method of such destruction; and

k. To notify _____, in writing, within ten (10) days of any request or subpoena for the LDS or Protected Health Information in the LDS.

4. Permitted Uses and Disclosures of the LDS. Recipient may use and/or disclose the LDS for its Research Purposes, including the production of GIS map layers based on de-identified, aggregated information from which small data cells have been removed, as permitted by state and federal law and this Agreement.

5. Dispute Resolution. The parties shall attempt to resolve any controversy, dispute or disagreement arising out of or relating to this Agreement, or breach thereof, by mediation, which shall be conducted in Travis County, Texas. If the mediation fails to produce a settlement, then either party may submit the dispute to binding arbitration in Travis County, Texas. The arbitration shall be conducted according to the rules of the American Arbitration Association, and any decision of the arbitrator shall be binding.

6. Termination of Agreement. This Agreement may be terminated at any time by either party by providing the other party with written notice. Unless terminated by written notice, this Agreement will terminate on _____, 20__.

7. Notices. Any notices required or permitted hereunder shall be given to the appropriate party at the address for the party or at such other last known address as the party shall specify in writing. Notice should be addressed to:

Recipient: Children’s Optimal Health
Charles J. Barnett
Chair
1201 West 38th Street
Austin, Texas 78705

A copy of the notice should be addressed to:

Kevin A. Reed
Davis & Wilkerson, P.C.

1801 S. Mopac, Suite 300
Austin, Texas 78746

Notice to either party shall be deemed given upon personal delivery or if sent by certified or registered mail, five (5) days after the date of mailing.

8. Governing Law. This Agreement shall be interpreted, construed, and governed according to the laws of the State of Texas and is performable in Travis County, Texas.

9. Entire Agreement. This Agreement sets forth the entire agreement and understanding between _____ and Recipient relating to the subject matter hereof and supersedes and merges all prior discussions. No modification of or amendment to this Agreement, nor any waiver of any rights under this Agreement, will be effective unless in writing signed by the party against which enforcement is sought.

10. Severability.

a. The parties agree and acknowledge that each agreement and covenant set forth herein constitutes a separate agreement independently supported by good and adequate consideration and that each such agreement shall be severable from the other provisions of this Agreement and shall survive this Agreement.

b. In case any one or more of the previous provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be construed as if such invalidity or unenforceable provision has never been contained herein.

11. Successors and Assigns. This Agreement will be binding upon heirs, executors, administrators and other legal representatives and will be for the benefit of _____, its successors and its assigns.

12. Surviving Terms. Termination of this Agreement for any reason shall not relieve either party from the obligation to perform through the effective date of such termination or to perform such obligations as may survive termination, which shall include the obligations set forth in Section 1 and Section 3.

13. Waiver of Breaches. The waiver by either party of a breach or violation of any provision of this Agreement shall not operate as, or be construed to be, a waiver of any subsequent breach of the same or other provision hereof.

14. Calculation of Days. Any reference to 'days' in this Agreement shall mean business days.

15. Definitions. Unless otherwise specified in this Agreement, all terms used in this Agreement not otherwise defined have the meaning established in FERPA (§ 513 of P.L. 93-380, 20 USC §1232g), or HIPAA Privacy and Security Regulations (45 CFR §§ 160-164), as amended from time to time.

IN WITNESS WHEREOF, each of the undersigned has caused this Agreement to be duly executed in its name and on its behalf.

CHILDREN’S OPTIMAL HEALTH

Charles J. Barnett
Chair

