

KENTUCKY OFFICE OF HEALTH DATA AND ANALYTICS, DIVISION OF HEALTH INFORMATION, OTHER PROVIDER PARTICIPATION AGREEMENT

**HEALTH INFORMATION EXCHANGE PARTICIPATION AGREEMENT
(FERPA VERSION)
BETWEEN
THE DIVISION OF HEALTH INFORMATION
AND
JEFFERSON COUNTY BOARD OF EDUCATION**

(Organization Legal name)

This Kentucky Health Information Exchange (KHIE) Other Provider Participation Agreement (the "Agreement") is entered into between the Commonwealth of Kentucky, Cabinet for Health and Family Services, Kentucky Office of Health Data and Analytics, Division of Health Information (Division), and the JEFFERSON COUNTY BOARD OF EDUCATION, a political subdivision of the Commonwealth of Kentucky doing business as the Jefferson County Public Schools having its principal place of business at 332 Newburg Road, Louisville, Kentucky, 40218 ("JCPS") (each a "Party" and collectively the "Parties").

WHEREAS, the Division is a part of a governmental agency within the Cabinet for Health and Family Services, which was created by Executive Order 2018-325 issued by Governor Matt Bevin to guide the implementation of electronic health information technology.

WHEREAS, the Division has established KHIE to facilitate health information sharing for Treatment, Payment, Operations, and to facilitate both state and federal initiatives through the use of Protected Health Information through KHIE in a manner that complies with all applicable laws and regulations, including without limitation those protective to the privacy and security of health information.

WHEREAS, JCPS is an elementary and secondary educational institution that, as a political division of the Commonwealth of Kentucky Department of Education ("KDE"), receives funds under programs administered by the U.S. Department of Education ("DOE") and, thereby, is subject to FERPA (defined below); and

WHEREAS, under the Joint Guidance on the Application of FERPA and HIPAA (defined below) To Student Health Records, updated December 2019 ("Joint Guidance"), JCPS maintains health information only in student health records that are "education records" under FERPA and, thus, not "protected health information" under HIPAA and the HIPAA Privacy Rule excludes such information from its coverage¹;

¹ Per the 2019 Joint Guidance (page 7 at IV. Where FERPA and HIPAA May Intersect): "In a few limited circumstances, an educational agency or institution subject to FERPA can also be subject to HIPAA. For instance, a school that provides health care to students in the normal course of business, such as through

WHEREAS, JCPS, under the authority of the Kentucky Department of Education (“KDE”) School-Based Health Services, is enrolled as a participant in the Centers for Disease Control and Prevention (“CDC”) Vaccines For Children (“VFC”) program, a federally funded program that is administered by the Kentucky Immunization Branch of the Department for Public Health²;

WHEREAS, the Division places an emphasis on electronic health technology as a means of improving patient care, reducing medical errors and making more efficient use of health care dollars by reducing redundant and duplicative services.

WHEREAS, the Division has and will enter into KHIE Participation Agreements (“Participation Agreements”) with other Health Care Providers, as defined herein, referred to in this Agreement as “Participants.”

WHEREAS, KHIE, as a designated public health authority in Kentucky, serves as the intermediary for the Kentucky Immunization Registry (“KYIR”) for Health Care Providers who seek to electronically submit individual immunization data as well as query individual immunization history;

WHEREAS, HIPAA allows KHIE, as a designated public health authority in Kentucky, to release KYIR immunization data to Health Care Providers and elementary and secondary schools in compliance with state law;

WHEREAS, KHIE and Participants have a common interest in a Bi-Directional KYIR Data Exchange (defined below) pursuant to the authority of KDE and Kentucky law at KRS 214.034 and 902 KAR § 2:055^[3] and the Cabinet for Health & Family Services (“CHFS”), which administers the Immunization Program in Kentucky schools including the VFC program^[4];

its health clinic, is also a ‘health care provider’ under HIPAA. If a school that is a ‘health care provider’ transmits any PHI electronically in connection with a transaction for which HHS has adopted a transaction standard, it is then a covered entity under HIPAA. As a covered entity, the school’s health care transactions must comply with the HIPAA Transactions and Code Sets Rule (or Transactions Rule). However, many schools that meet the definition of a HIPAA covered entity do not have to comply with the requirements of the HIPAA Rules because the school’s only health records are considered ‘education records’ or ‘treatment records’ under FERPA. See 45 CFR § 160.103 (definition of ‘protected health information’ ¶¶ (2)(i), (ii)). The HIPAA Privacy Rule specifically excludes from its coverage those records that are protected by FERPA by excluding such records from the definition of “protected health information.” See Joint Guidance (updated December 2019) at https://studentprivacy.ed.gov/sites/default/files/resource_document/file/2019%20HIPAA%20FERPA%20Joint%20Guidance%20508.pdf

² See CHFS Division of Epidemiology and Health Planning Vaccines for Children Program at <https://chfs.ky.gov/agencies/dph/dehp/Pages/vfc.aspx>.

³ Mandates certain elementary and secondary student immunizations.

⁴ See KDE Student Health Services webpage on Immunizations at <https://education.ky.gov/districts/SHS/Pages/Immunization-Information.aspx> (last updated 7/20/2020)

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants and agreements set forth below, and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, and wishing to be legally bound hereby, the Parties hereto agree as follows:

1. DEFINITIONS

Authorized User means an individual authorized by a Participant under a Participation Agreement to use KHIE to access or provide Data for a Permitted Use.

Bi-Directional KYIR Data Exchange means a connection to KHIE by a Data Recipient or Data Provider, including Participant, for the purpose of electronically submitting or receiving individual KYIR immunization data for Kentucky school students.

CCDA means the Consolidated Clinical Document Architecture. It is a complete technical architecture used to create documents and template methodologies for medical documents. The primary function of the CCDA is to standardize the content and structure of clinical care summaries.

Data means patient health information provided to KHIE by a Participant. For purposes of the Agreement, Data means information described in Section 4 herein.

Data Exchange means electronically providing or accessing Data through KHIE.

Data Provider means a Participant that submits Data to KHIE for use by a Data Recipient.

Data Recipient means a Participant that uses KHIE to obtain Data.

Education Record has the same meaning as set forth in FERPA at 20 U.S.C. § 1232g(a)(4)(A) and 34 C.F.R. § 99.3, and, as to Participant, includes the student immunization data to be exchanged with the KYIR under this Agreement.

Effective Date means the latest date of a signature of a person with authority to bind a Party to the Agreement.

FERPA means the Family Educational Rights and Privacy Act, codified at 20 U.S.C. § 1232g, implementing regulations at 34 CFR Part 99 and DOE and HHS guidance.

HIPAA means the Health Insurance Portability and Accountability Act of 1996, Title XII of the American Recovery and Reinvestment Act of 2009 (the "HITECH Act") and the Genetic Information Nondiscrimination Act of 2008 ("GINA"), and the regulations promulgated thereunder at 45 CFR Parts 160 and 164, each as may be amended from time to time.

HIPAA Privacy Rule means the regulations promulgated at 45 CFR Parts 160 and 164, as may be amended from time to time.

HIPAA Security Rule means the regulations promulgated at 45 CFR Parts 160, 162 and 164, as may be amended from time to time.

KHIE means the health information exchange provided by the Division of Health Information. KHIE provides connection options for the capability to exchange key clinical information among Participants.

Medicaid and Other Source Data means information related to a patient provided to KHIE by the Department for Medicaid Services, Department for Public Health, other agencies of the Cabinet for Health and Family Services, and third party payers, including but not limited to laboratory data from the Department for Public Health State Laboratory.

Operations shall have the definition assigned to Health Care Operations under HIPAA as limited by 45 CFR § 164.506(c)(iv).

Participant means a Health Care Provider who is also a Covered Entity⁵ as defined by HIPAA or the Kentucky Department for Medicaid Services or the Kentucky State Laboratory, Division of Laboratory Services, that has entered into a KHIE Participation Agreement that has not been terminated, including the Participant named as a Party to the Agreement; notwithstanding the foregoing, with regard to student immunization records, JCPS as a Participant herein is subject to FERPA, and the HIPAA Privacy Rule or HIPAA Security Rule shall not apply to the receipt or submission by JCPS of student immunization records via the Bi-Directional KYIR Data Exchange.

Payment shall have the meaning set forth at 45 CFR § 164.501 of the HIPAA Regulations.

Permitted Use means use:

⁵ See Joint Guidance (pages 7-8, V. Frequently Asked Questions, 1. Does the HIPAA Privacy Rule apply to an elementary or secondary school?). "In most cases, the HIPAA Privacy Rule does not apply to an elementary or secondary school because the school either: (1) is not a HIPAA covered entity or (2) is a HIPAA covered entity but maintains health information only on students in records that are 'education records' under FERPA and, therefore, not PHI covered by the HIPAA Privacy Rule. ... Even if a school is a covered entity and must comply with the HIPAA Transactions and Code Sets Rules, the school would not be required to comply with the HIPAA Privacy Rule if it only maintains health information in FERPA 'education records.' For example, a public high school might employ a health care provider that bills Medicaid electronically for services provided to a student under the IDEA. The school is a HIPAA covered entity because it engages in one of the covered transactions electronically, and therefore, would be subject to the HIPAA transaction standard requirements. However, if the school provider maintains health information only in 'education records' under FERPA, the school is not required to comply with the HIPAA Privacy Rule because the Privacy Rule explicitly excludes FERPA 'education records.' See 45 CFR § 160.103 (definition of 'protected health information,' ¶¶ (2)(i), (ii))." See https://studentprivacy.ed.gov/sites/default/files/resource_document/file/2019%20HIPAA%20FERPA%20Joint%20Guidance%20508.pdf.

- (a) By health care providers:
 - (i) For Treatment of the individual who is the subject of the Data;
 - (ii) For the Payment activities of the Participant for the individual who is the subject of the Data which includes, but is not limited to, exchanging data in response to or to support a claim for reimbursement by Participant to a Health Plan;
 - (iii) For the Health Care Operations of
 - 1. The provider of the Data if the provider is a Participant,
 - 2. A covered entity if the provider of the Data is exchanging Data on behalf of the covered entity, or
 - 3. The receiver of the data, if the receiver of the Data is a Participant who has an established Treatment relationship with the individual who the subject of the Data or the receiver of the Data is exchanging Data on behalf of a Participant, and: the purpose of the exchange is for those health care operations listed in paragraphs (1) or (2) of the definition of Health Care Operations in 45 CFR § 164.501 or health care fraud and abuse detection or compliance of such Health Care Provider. All Permitted Use by a Participant is such that patient authorization is not required under HIPAA; and
 - (iv) To facilitate the implementation of “meaningful use” criteria as required under the American Recovery and Reinvestment Act of 2009 and its related federal regulations, as permitted by HIPAA;
- (b) By the Department for Medicaid Services:
 - (i) For Treatment and Payment for Medicaid patients and/or Operations as these terms have been defined in the Permitted Use section (a) above such that patient authorization is not required under HIPAA, limited to functions related to case management, care coordination, and quality improvement activities; and
 - (ii) To facilitate the implementation of “meaningful use” criteria as required under the American Recovery and Reinvestment Act of 2009 and its related federal regulations, as permitted by HIPAA;

(c) By the Kentucky State Laboratory, Division of Laboratory Services:

- (i) For Treatment and Payment for patients as defined in the Permitted Use section (a) above and/or Operations such that patient authorization is not required under HIPAA, limited to functions related to case management, care coordination, and quality improvement activities for the Kentucky newborn screening program as authorized in KRS 214.155 and cited as the James William Lazzaro and Madison Leigh Heflin Newborn Screening Act; and
- (ii) To facilitate the implementation of “meaningful use” criteria as required under the American Recovery and Reinvestment Act of 2009 and its related federal regulations, as permitted by HIPAA;

(d) Public health activities and reporting as permitted by applicable law, including the HIPAA regulation at 45 CFR § 164.512(b) or 164.514(e), including but not limited to the Bi-Directional KYIR Data Exchange herein; and

(e) Uses and disclosures pursuant to an Authorization provided by the individual who is the subject of the Data exchanged or such individual's personal representative as described in 42 CFR § 164.502(g) of HIPAA.

Proprietary and Confidential Party Information means proprietary or confidential materials or information of a Party or any contractor or subcontractor of a Party, such as those listed in Section 2.1(a) and those engaged by Participants to assist with connectivity and to provide support services, in any medium or format that is labeled as proprietary and/or confidential. Proprietary and Confidential Party Information includes, but is not limited to: (i) proprietary or confidential designs, drawings, procedures, trade secrets, processes, specifications, source code, exchange architecture, processes and security measures, research and development, including, but not limited to, research protocols and findings, passwords and identifiers, new products and marketing plans; (ii) proprietary financial and business information; and (iii) proprietary or confidential information or reports provided pursuant to this Agreement. Notwithstanding any label to the contrary, Proprietary and Confidential Party Information does not include: (a) Data content; (b) any information that is or becomes known to the public through no fault of a receiving Party; (c) any information that is learned by a receiving Party from a third party entitled to disclose it; (d) any information that is already known to a receiving Party before receipt from a Party as documented by receiving Party's written records; (e) any information that is required to be disclosed by law or (f) any information that is independently developed by receiving Party without reference to, reliance on, or use of, Proprietary and Confidential Party Information. Data content is excluded from the definition of Proprietary and Confidential Party Information because other provisions of the Participation Agreement address the appropriate protections for this Data.

The Division means the administrative division of the Kentucky Office of Health Data and Analytics within the Cabinet for Health and Family Services.

Treatment shall have the meaning set forth at 45 C.F.R. § 164.501 of the HIPAA Regulations.

Other capitalized terms used in the Agreement but not defined in the Agreement shall have the definitions assigned to such terms under HIPAA or FERPA.

2. THE DIVISION OBLIGATIONS

2.1. Services Provided by the Division

- (a) KHIE Operation. The Division will maintain and operate KHIE. The Division will provide a vendor, and may contract with other contractors to maintain and operate KHIE or to provide support services. The vendor may contract with other subcontractors to maintain and operate KHIE or to provide support services. The Division will require that its subcontractors comply with the applicable terms and conditions of the Agreement.
- (b) Services. The Division shall be responsible for building the interfaces to the Participant on the KHIE side and shall collaborate with Participants to develop the interfaces required on the Participants' side. The Division may also provide the following Services to Participants as available:
 - (i) The Division may provide services on behalf of Participants for public health and registry reporting, including but not limited to submission of Participant Data to the following registries: Kentucky Immunization Registry, Kentucky Cancer Registry, Kentucky Reportable Diseases Surveillance Registry, KHIE Advance Directive Registry, and BioSense syndromic surveillance reporting. The Participant must sign an Addendum to authorize each reporting service.
 - (ii) The Division may use and disclose Patient Information to perform data aggregation and analytic services as permitted by 45 C.F.R. §164.504(e)(2)(i)(B). Such services performed for Participant shall be established in an Addendum.
- (c) Access to Exchange for Permitted Use. The Division will make KHIE available to Participants for Permitted Uses, including: (i) Data Recipients that may access Data through KHIE; and (ii) Data Providers that provide Data for access by Participants through KHIE.

The Division may establish arrangements with other health information exchanges to allow Participants access to additional Data for a Permitted Use. The Division will require contractually that the users of such other health information exchanges which are permitted to access Data from Participants will limit access to Permitted Use only and will use its best efforts to enforce such contractual requirements. Any change to a Permitted Use must be documented in an Addendum signed by the Parties.

- (d) Exchange Availability. The Division will make all reasonable efforts to make KHIE available to Participants 24 hours a day, 7 days a week; however, KHIE availability may be temporarily suspended for maintenance or unscheduled interruptions. The Division will use its best efforts to provide reasonable advance notice of any such suspension or interruptions of KHIE availability and to restore KHIE availability.

2.2. The Division Records; Use of Data.

- (a) The Division Records. The Division will maintain records of the date, time and records accessed by a Participant through KHIE as set forth in its Policies and Standards. The Division may also maintain a master patient index, a record locator service and Medicaid and Other Source data as part of KHIE for the benefit of the Participants. Except as provided above, the Division will not maintain, and will not be responsible for either maintaining records of the content of any Data Exchange between Participants or inspecting the content of Data.
- (b) The Division Use and Disclosure of Information. The Division will not disclose Data or Data Exchange Information to any non-Participant third parties except as: (i) provided by the Agreement; (ii) directed in writing by the originating Participant; or (iii) required by order of any court with appropriate jurisdiction over the Division. The Division may disclose Medicaid and Other Source Data as permitted under applicable law. The Division may access Data and KHIE Information only for the operation of the Exchange and in the performance of Services as authorized under this Agreement, including collecting Medicaid or Other Source Data for the master patient index/record locator service, testing, verifying performance, and providing success measurements to any federal agency that supplies grant funding for the operation of KHIE.
- (c)

2.3. Safeguards. The Division shall safeguard the confidentiality of all Data obtained by the Division from Participant in connection with the Agreement, and in accordance with applicable state and federal laws including HIPAA.

2.4. Policies and Procedures. The Division will establish policies and procedures (respectively, “Policies and Procedures”) that are consistent with the Agreement and will govern the Division’s and Participant’s use of KHIE. The Division will make these Policies and Procedures available to Participant through the KHIE website. These Policies and Procedures will govern the use, submission, transfer, access, privacy and security of Data. These Policies and Procedures, however, shall not alter the relative rights and obligations of the Parties under the Agreement.

(a) Changes to Policies and Standards. The Division may change or amend the Policies and Standards from time to time at its discretion but not inconsistent with the terms and conditions of the Agreement and will notify the Participant of proposed and final changes and will afford Participant an opportunity to comment on such proposed and final changes. The Division will provide Participants notice of such changes to Policies and Standards by electronic mail. Any changes will be effective thirty (30) days following adoption by the Division unless the Division determines that an earlier effective date is required to address a legal requirement, a concern relating to the privacy or security of Data or an emergency situation. The Division Health Information also may postpone the effective date of a change if the Division determines, in its sole discretion, that additional implementation time is required. Except as set forth in the Agreement, Participant will have no ownership or other property rights in the Policies and Standards or other materials or services provided by the Division .

(b) Security. The Division will adopt Policies and Standards that are reasonable, appropriate and consistent with the Agreement and will operate KHIE in accordance with such Policies and Standards to provide that all Data Exchanges are authorized, and to protect Data from improper access, tampering or unauthorized disclosure. Such Policies and Standards will include administrative procedures, physical security measures, and technical security services that are reasonably necessary to secure the Data. The Division and Participant will comply with the security Policies and Standards established by the Division except that Participant’s compliance with such Policies and Standards shall apply only to connections to KHIE that are under the control of Participant. The Division will maintain sufficient safeguards and procedures, in compliance with HIPAA, to maintain the security and privacy of Data that is provided or accessed through Data Exchanges through KHIE.

(c) Investigations. The Division will adopt Policies and Standards for the investigation and resolution of privacy and security incidents or other concerns relating to compliance with the Agreement. The Division will notify Participant in writing of any compliance concerns related to Participant’s use of KHIE, and Participant will cooperate with the Division in its investigation of any compliance concerns or corrective action. Notwithstanding the Policies and Standards or anything in this Agreement, the Parties’ reserve their rights to investigate, handle and resolve personnel and medical staff issues in their sole discretion and to maintain confidentiality of such matters.

3. DATA RECIPIENT OBLIGATIONS

3.1 Data Exchange. By engaging in Data Exchange, Participant agrees that its participation in any Data Exchange, and use of KHIE by Participant and its Authorized Users, will comply with the terms of the Agreement and applicable laws and regulations.

3.2 Permitted Use. Participant and its Authorized Users will use KHIE only for a Permitted Use. Participant and its Authorized Users will comply with the Agreement and all applicable laws and regulations governing the privacy and security of Data received through KHIE. Data obtained by Participant through the Exchange may become part of Patient's medical record. If Participant includes Data obtained through a Data Exchange in Patient's medical record, Participant and Authorized User may use such Data only for those purposes permitted by law. Participant will decide in its discretion whether to use KHIE, and to what extent. No Participant or Authorized User may use the Exchange or Data received from the Exchange to perform comparative studies/analysis or data aggregation without written consent from the Participant owning such Data, unless such use is a "Permitted Use."

3.3 Authorized Users. Participant will identify and authenticate its Authorized Users, in accordance with the Policies and Standards, who may use KHIE for Permitted Use on behalf of Participant. Authorized Users will include only those individuals who require access to KHIE to facilitate Participant's use of the Data for a Permitted Use. Participant shall require its Authorized Users to comply with the terms and conditions of the Agreement and applicable laws and regulations.

3.4 System Operations.

(a) Systems Necessary to Participate in Exchange. Participant, at its own expense, will provide and maintain the equipment, software, services and testing necessary to use KHIE, except for such software expressly provided by the Division pursuant to Section 6 of the Agreement.

(b) Documentation of Information for Patient Treatment; Record Retention, Storage and Backup. As Participant deems necessary, Participant, at its own expense, will maintain records of Data accessed through KHIE and used by Participant for Treatment. Participant will determine the form for such records, which may include incorporation of Data into patients' medical records electronically, by hard copy or by other form of summary, notation or documentation.

(c) Privacy, Security and Accuracy. Participant will maintain sufficient safeguards and procedures, in compliance with FERPA and other applicable state or federal law, to maintain the security and privacy of Data.

4. DATA PROVIDER OBLIGATIONS

4.1 Data Exchange and Data Submission. By engaging in KHIE, Participant agrees that: (a) its participation in any Data Exchange will comply with the terms of the Agreement and applicable laws and regulations; and (b) the Data provided by Participant can be related to and identified with source records maintained by Participant.

4.2 Permitted Use. Participant and its Authorized Users will use KHIE to provide Data only for a Permitted Use. Participant will and will require its Authorized Users to comply with the Agreement and all applicable laws and regulations governing the privacy and security of Data received through KHIE. Participant and the Division acknowledge that Participant will make Data available for access through KHIE only for a Permitted Use.

4.3 System Operations.

(a) Systems Necessary to Participate in Exchange. Participant, at its own expense, will provide and maintain the equipment, software, services and testing necessary to participate in KHIE, except for such software expressly provided by the Division pursuant to Section 6.

(b) Record Retention, Storage and Backup. Participant, at its own expense, will maintain Data backup and retention to maintain records of Data submitted to KHIE.

(c) Privacy, Security and Accuracy. Participant will maintain sufficient safeguards and procedures, in compliance with HIPAA or FERPA, as applicable, to maintain the security and privacy of Data.

4.4 Data Provided. Participant, with the exception of Kentucky State Laboratory, agrees to make available the following Data to KHIE to the extent technologically feasible and to the extent created and maintained by Participant:

- (a) All of its hospital-specific inpatient data, including subsequent corrections or additions, as defined and required by the KHIE Participant Connectivity Guide, as amended from time to time;
- (b) All of its outpatient surgical data, including subsequent corrections or additions, as described in the KHIE Participant Connectivity Guide, as amended from time to time;
- (c) All of its emergency room Data; and
- (d) All ambulatory care Data.

5. NOTIFICATION OF PARTICIPANT'S BREACH OR VIOLATION

5.1 If Participant knows of an occurrence, activity or practice that constitutes a material breach or violation of the Agreement, Participant agrees to notify the Division within five (5) business days of determining that such occurrence, activity or practice constitutes a material breach or violation of this Agreement and must take reasonable steps to cure the material breach or end the violation. If the steps are unsuccessful, the Division of Health Information may terminate the Agreement.

6. SOFTWARE LICENSE

6.1. License. The Division grants to Participant for the term of the Agreement a royalty-free, non-exclusive, nontransferable, non-assignable, non-sub-licensable, and limited right to use any software identified by the Division in its technical operation Standards for the sole purpose of participating in KHIE under the terms and conditions of the Agreement. THE SOFTWARE SHALL NOT BE USED FOR ANY OTHER PURPOSE WHATSOEVER, AND SHALL NOT OTHERWISE BE COPIED OR INCORPORATED INTO ANY OTHER COMPUTER PROGRAM, HARDWARE, FIRMWARE, OR PRODUCT. THE SOFTWARE IS LICENSED "AS IS" AND THE DIVISION DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR TITLE. Participant acknowledges that the software may have been licensed to the Division by third parties, and that the license granted under the Agreement is subject to the extent permitted by law to the Division's grant of license from such third parties. As additional software is developed by or for the Division for KHIE, it shall become subject to the Agreement and a part of this license upon written notice to Participant. This Section 6 applies only to software that is installed on hardware owned or leased by Participant or otherwise provided to Participant by the Division to use with KHIE.

7. PROPRIETARY PROVISIONS

During the term of the Agreement, each Party may have access to Proprietary and Confidential Party Information. To the extent that a Party receives Proprietary and Confidential Party Information, each party agrees to the following.

7.1. Non-disclosure. The Parties will hold Proprietary and Confidential Party Information in strict confidence, which includes not making the Proprietary and Confidential Party Information available for any purpose other than as specified in the Agreement and taking reasonable steps to ensure that the Proprietary and Confidential Party Information is not disclosed or distributed by employees, agents or contractors or consultants (who will have access to the same only on a "need to know" basis) to third parties in violation of the Agreement.

However, nothing in this Section 7.1 shall prohibit or be deemed to prohibit a Party from disclosing any Proprietary and Confidential Party Information (or any other

information the disclosure of which is otherwise prohibited hereunder) to the extent that such Party becomes legally compelled to make such disclosure by reason of a subpoena or order of a court, administrative agency or other governmental body of competent jurisdiction or as required by the Kentucky Open Records Act, and such disclosures are expressly permitted hereunder; provided, however, that a Party that has been requested or becomes legally compelled to make a disclosure otherwise prohibited hereunder by reason of a subpoena or order of a court, administrative agency or other governmental body of competent jurisdiction shall provide the other Party with notice thereof within five (5) calendar days, or if sooner, at least three (3) business days before such disclosure will be made so that the other Party may seek a protective order or other appropriate remedy. In no event shall a Party be deemed to be liable hereunder for compliance with any such subpoena or order of any court, administrative agency or other governmental body of competent jurisdiction or with the Kentucky Open Records Act.

7.2. Damages. In no event shall the Division or Participant, and their respective officers, directors, employees, successors and assigns be responsible for any indirect, special, incidental, consequential or similar damages to each other or any other person or entity resulting from Participant's use of KHIE or Data obtained from KHIE.

8. TERM AND TERMINATION

8.1. Term. The Agreement shall become effective on the Effective Date and shall continue until terminated by a Party as allowed by this Section of the Agreement.

8.2. Termination. The Agreement shall continue in effect and be automatically renewed annually until terminated with or without cause by written notice by a Party.

8.3. Notice. Any notice required under this Section 8 of the Agreement shall be given in accordance with Section 13.10 of the Agreement.

9. WARRANTIES

9.1 No Warranties – The Division will use its best efforts to correctly transmit Data Exchanges between Participants on a timely basis. THE DIVISION MAKES NO REPRESENTATION OR WARRANTY THAT THE DATA DELIVERED TO THE DATA RECIPIENT WILL BE CORRECT OR COMPLETE. THE DIVISION MAKES NO WARRANTY OR REPRESENTATION REGARDING THE ACCURACY OR RELIABILITY OF ANY INFORMATION TECHNOLOGY SYSTEM USED FOR DATA EXCHANGE. **THE DIVISION DISCLAIMS ALL WARRANTIES REGARDING ANY PRODUCT, SERVICES, OR RESOURCES PROVIDED BY IT, OR DATA EXCHANGES TRANSMITTED, PURSUANT TO THE AGREEMENT INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE.**

9.2 No Warranties - Participant. Participant expressly disclaims any and all warranties regarding the patient data of Participant through KHIE, including, without

limitation, any and all warranties of accuracy, completeness, fitness for a particular use and any other express or implied warranties. Participant acknowledges and agrees that any data accessed by Participant or its Authorized Users is provided on an “as-is” and “where-is” basis, and the Division, its contractors, subcontractors and Participant shall take all reasonable efforts necessary to inform Authorized Users of their responsibility to review, update and confirm the accuracy of any information accessed through KHIE. Use of KHIE is not a substitute for a health care provider’s standard practice or professional judgment. Any decision with respect to the appropriateness of diagnoses or treatments or the validity or reliability of information is the sole responsibility of the patient’s health care provider. Nothing in this subsection 9.2 is intended to limit Participant’s obligations under Section 3 or Section 4 of the Agreement.

10. LIMITATION OF LIABILITY

10.1. Limitation of Liability. Neither the Division nor Participant will be liable to the other or any other contractor or subcontractor of a Party, such as those listed in Section 2.1(a) and those engaged by Participant, for lost profits or lost Data, or any special, incidental, exemplary, indirect, consequential or punitive damages (including loss of use or lost profits) arising from any delay, omission or error in a KHIE Data Exchange or receipt of Data, or arising out of or in connection with the Agreement, whether such liability arises from any claim based upon contract, warrant, tort (including negligence), product liability or otherwise, and whether or not either party has been advised of the possibility of such loss or damage.

10.2. Not a Medical Service. KHIE does not make clinical, medical or other decisions and is not a substitute for professional medical judgment applied by Participant or its Authorized Users. Participant and its Authorized Users are solely responsible for confirming the accuracy of all Data.

11. HIPAA AND FERPA COMPLIANCE

The Participant agrees to comply with, and to cause its respective employees, subcontractors and agents to comply with, as appropriate, HIPAA in so far as the security of any connection to KHIE that is under Participant’s control, and will comply with FERPA as well as other state and federal laws and regulations applicable to the security, protection and privacy of student health information. The Division agrees to comply with, and to cause its respective employees, subcontractors and agents to comply with, as appropriate, HIPAA as well as other state and federal laws and regulations applicable to the security, protection and privacy of individually identifiable health care information. The Division shall in good faith execute any and all agreements that Participant is required to have the Division execute in order that Participant may comply with FERPA. In the event that either Party or its employees or agents fail to comply with this provision, the complying Party may immediately terminate the Agreement, in addition to seeking other remedies available to it at law or equity.

12. MISCELLANEOUS

12.1. Interpretation. Any ambiguity in the Agreement shall be resolved in favor of a meaning that permits the Division to comply with HIPAA and Participant to comply with FERPA.

12.2. No "Designated Record Set". The Parties hereto agree that the Data submitted to KHIE under the Agreement is not a "Designated Record Set" for purposes of individuals' rights to access, inspect or amend "protected health information" about them under the HIPAA Privacy Rules.

12.3. No Third Party Beneficiaries. Nothing expressed or implied in the Agreement is intended to confer, nor shall anything herein confer, upon any person other than the Parties, their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

13. GENERAL PROVISIONS

13.1. Integration. Except as otherwise specifically stated herein, the Agreement sets forth the entire and only Agreement between the Division and the Participant relative to KHIE. Any representations, promise, or condition, whether oral or written, not incorporated herein shall not be binding upon either Party.

13.2. Incorporation by Reference. All exhibits attached to the Agreement are incorporated by reference and made a part of the Agreement as if those exhibits were set forth in the text of the Agreement.

13.3. Relationship of Parties. Nothing contained in the Agreement shall constitute, or be construed to create, a partnership, joint venture, agency or any other relationship between the Parties other than that of independent contractors to the Agreement.

13.4. Assignment. In no event shall any party assign any of its rights, powers, duties, or obligations under the Agreement without receipt of the prior written consent of the other party, and any attempt to do so shall be void.

13.5. Severability. If any term, covenant, condition or provision hereof is illegal, or the application thereof to any person or in any circumstances shall, to any extent, be invalid or unenforceable, the remainder of the Agreement, or the application of such term, covenant, condition or provision to persons or in circumstances other than those with respect to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant, condition and provision of the Agreement shall be valid and enforceable to the fullest extent of permitted by law.

13.6. Governing Law. The Agreement shall be construed and enforced in accordance with, and governed by, the laws of the Commonwealth of Kentucky.

13.7. Enforceability. The Agreement shall be enforceable only by the Parties hereto and their successors pursuant to an assignment which is not prohibited under the terms of the Agreement. In all other respects, the Agreement is not intended, nor shall it be construed, to create any other third party beneficiary rights.

13.8. Construction. If any language is stricken or deleted from the Agreement, such language shall be deemed never to have appeared herein and no other connotation shall be drawn therefrom. The paragraph headings used herein are for convenience only and shall not be used in the construction or interpretation of the Agreement.

13.9. Survival. The respective rights and obligations of the Parties under the provisions of Sections 2.3 (Safeguards), 3 (Data Recipient Obligations), 4 (Data Provider Obligations), 7.1 (Non-disclosure), 9 (Warranties), 10.1 (Limitation of Liability), 11 (HIPAA), 12 (Miscellaneous), and 13 (General Provisions) shall survive the termination of this Agreement.

13.10. Notice. Any notice, offer, demand or communication required or permitted to be given under any provision of the Agreement shall be deemed to have been sufficiently given or served for all purposes if delivered personally to the party to whom the same is directed, or if sent by first class mail, postage and charges prepaid, addressed to the address of the Party set forth below.

The Division of Health Information:

The Division of Health Information
Cabinet for Health and Family Services
8 Mill Creek Park
Frankfort, Kentucky 40601
Attention: KHIE Administrator
Phone: (502) 564-2801
Fax: (502) 564-0302
Email address: _____

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

Office of Health Data and Analytics
Cabinet for Health and Family Services
275 East Main Street, 4W-E
Frankfort, Kentucky 40621
Attention: Privacy Officer
Phone: (502) 564-7905
Fax: (502) 564-0302
Email address: _____

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

Office of Administrative & Technology Services
Cabinet for Health and Family Services
11 Mill Creek Park
Frankfort, Kentucky 40601
Attention: Security Officer
Phone: (502) 564-1015
Fax: (502) 564-0203
Email address: _____

To Participant:
Jefferson County Board of Education d/b/a
Jefferson County Public Schools
ATTN: Eva Stone
COPY TO: General Counsel
3332 Newburg Road
Louisville, KY 40218
Phone: (502) 485-3387
Email address: Eva.Stone@jefferson.kyschools.us

Except as otherwise expressly provided in the Agreement, any such notice shall be deemed to be given on the date ten (10) business days after the date on which the same is deposited in a regularly maintained receptacle for the deposit of United States mail, addressed as provided in the immediately preceding sentence. Either Party may change its address for purposes of the Agreement by giving the other Party notice thereof in the manner hereinbefore provided for the giving of notice.

13.11. Amendments. The Agreement cannot be changed, modified or discharged orally, but only with the written agreement of the Parties hereto.

13.12. Signing Authority. Each person signing the Agreement hereby represents that he or she is authorized to enter into the Agreement on behalf of the Party for which he or she is signing.

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IN WITNESS WHEREOF, the parties have executed the Agreement this
15 day of SEPTEMBER, 2021.

THE DIVISION OF HEALTH
INFORMATION ("DIVISION")

Name: Andrew Bledsoe

Title: Deputy Executive Director

Signature: _____

Date: _____

JEFFERSON COUNTY BOARD OF
EDUCATION D/B/A JCPS
("PARTICIPANT")

Name: _____

Title: _____

Signature: _____

Date: _____

PARTICIPANT IMMUNIZATION REGISTRY AUTHORIZATION

As part of the Kentucky Health Information Exchange (KHIE), if properly authorized, Participants may elect to receive Immunization Registry Services. This form authorizes the Division of Health Information to provide Immunization Registry Services on behalf of:

JEFFERSON COUNTY BOARD OF EDUCATION, a political subdivision of the Commonwealth of Kentucky doing business as the Jefferson County Public Schools having its principal place of business at 332 Newburg Road, Louisville, Kentucky, 40218 ("JCPS")
(Organization Legal name)

In accordance with KRS 214.034 and 902 KAR § 2:055 or as hereafter amended or superseded, Participant desires to submit and receive Immunization Registry information electronically to the Kentucky Department of Public Health. Participant states that it has signed a Participation Agreement with the Division of Health Information formerly GOEHI and that agreement will remain in full force and effect throughout the time the Participant receives Immunization Connectivity Services under this Participant Immunization Registry Authorization.

Participant is permitting the Division of Health Information to access patient immunization and other patient information directly from the Participant's data made available for exchange through KHIE in order to facilitate submission of Immunization Registry information in accordance with applicable laws and regulations.

Participant is agreeing that KHIE is the delivery method that is approved by the Participant to the Registry for information identified in KRS 214.034 and 902 KAR § 2:055 or as hereafter amended or superseded. Participant understands KHIE is only able to deliver and transfer the immunization data of Participants that have provided this executed Participant Immunization Registry Authorization to the Division of Health Information. Participant shall notify the Division of Health Information in writing if it no longer desires transmittal of data to the Immunization Registry.

PARTICIPANT NAME:

AUTHORIZED SIGNATURE:

JEFFERSON COUNTY BOARD

By: _____

OF EDUCATION d/b/a JCPS

Print Name: _____

DATE: _____

