

**MEDICAID BILLING SERVICES AND LICENSE AGREEMENT  
BETWEEN**

**Austin Independent School District  
and  
Texas Association of School Boards, Inc.**

**Effective Date of Agreement: September 1, 2010**

Whereas, Austin ISD ("District") desires to contract for Medicaid Billing Services and the Texas Association of School Boards, Inc. ("TASB") does hereby agree to accept appointment by District as its Fiscal Agent for the purposes set forth in this Agreement; and

Whereas, TASB is willing to provide the following contracted professional services and its designated employees and agents have the special knowledge and skill required to provide such services through its SMART© Service; and

Whereas TASB owns the Site-based Medicaid Administration, Reimbursement, and Tracking software and related documentation, including but not limited to online user documentation, (hereinafter, "SMART© Program" or "SMART") and agrees to license the SMART© Program to District pursuant to the terms of this Agreement if District submits its claims electronically; and

Whereas, TASB and District enter into this Agreement for the purposes of submitting District's SHARS claims to TMHP, either electronically or by paper;

Now, therefore, in consideration of the mutual agreements and definitions contained herein, the parties hereto agree as follows;

**ARTICLE I. DEFINITIONS**

- A. "District" means the aforementioned independent school district, special education cooperative or shared services arrangement in the State of Texas.
- B. "TASB" means Texas Association of School Boards, Inc.
- C. "Agreement" means this contract between the District and TASB, with specified exhibits.
- D. "Claim" means the right of the District to seek reimbursement from the federal government for a qualifying health and related service or services provided to a Medicaid eligible student meeting Special Education eligibility requirements as set forth in the Individuals With Disabilities Act ("IDEA").
- E. "Fiscal Agent" means TASB for the limited purposes of performing the services outlined herein on behalf of the district.
- F. "SMART© Services" means access to the SMART© Program and all other services provided by TASB pursuant to this Agreement. If District is not accessing the SMART© Program to file its claims electronically, the term SMART© Services

includes all services provided to District by Fiscal Agent under this Agreement.

G. "TMHP" means Texas Medicaid and Healthcare Partnership, the contractor to whom Districts must submit Claims for Medicaid Reimbursement under the SHARS Program.

H. "SHARS" means School Health and Related Services. SHARS is a Medicaid financing program and is a joint program of the Texas Education Agency and the Texas Health and Human Services Commission. SHARS allows local school districts to obtain Medicaid reimbursement for certain health-related services provided to students in special education.

I. "HHSC" means the Texas Health and Human Services Commission.

## ARTICLE II. DUTIES AND RESPONSIBILITIES FOR FISCAL AGENT AND DISTRICT

Districts may file either electronic claims or paper claims under this Agreement.

For a district filing electronic claims:

Fiscal Agent shall perform the duties specified in Exhibit A1.  
District shall perform the duties specified in Exhibit A2.

For a district filing paper claims:

Fiscal Agent shall perform the duties specified in Exhibit B1.  
District shall perform the duties specified in Exhibit B2.

## ARTICLE III. BILLING SERVICE AUTHORIZATION

Fiscal Agent is authorized to submit claims on behalf of District.

## ARTICLE IV. OWNERSHIP OF AND LICENSE OF SMART© PROGRAM

TASB is the sole and exclusive owner of the SMART© Program. SMART© is an Internet-based application available to TASB members which enter into this Agreement and choose to submit claims electronically. If District submits its claims electronically, this Agreement serves as a license for District to use the SMART© Program, pursuant to the terms herein.

## ARTICLE V. COMPENSATION

For services rendered under this Agreement, TASB shall be compensated as detailed in Exhibit C. District and Fiscal Agent additionally agree that any reimbursement methodology used pursuant to this Agreement does not contain any type of incentive, directly or indirectly, for inappropriately inflating, in any way, claims submitted on behalf of District.

District agrees to promptly pay Fiscal Agent all fees owed to Fiscal Agent and to provide any assistance and cooperation necessary to ensure that Fiscal Agent is able to collect the fees

owed to Fiscal Agent under this Agreement if the fees are mistakenly sent to another vendor of Medicaid billing services.

District warrants that all payments and disbursements required of it under this Agreement shall be made from current revenues available to the District.

#### ARTICLE VII. ERRORS AND OMISSIONS

No accidental errors or omissions upon the part of either party shall relieve the other party of its responsibilities under this Agreement, provided such errors and omissions are reported as soon after discovery as possible.

#### ARTICLE VIII. COMMENCEMENT, AMENDMENT, AND TERMINATION

This Agreement shall be effective for a term beginning on the date set forth above and ending three years later. This Agreement automatically renews for successive three-year terms until terminated as set out below.

Fiscal Agent may amend this Agreement by providing District at least sixty (60) days' advance written notice of the amendment. District's payment of the fee provided for in Exhibit C and/or continued use of TASB's SMART<sup>®</sup> Services constitutes District's acceptance of any amendment and District's signature is not required for the amendment to be effective.

This Agreement may be terminated by either party provided such party provides the other party with sixty (60) days advance written notice of its intent to terminate. If the District ceases to be a TASB member, this Agreement will immediately terminate. If the District violates TASB's intellectual property rights in the SMART<sup>®</sup> program or related documentation, TASB may immediately terminate this Agreement.

District and Fiscal Agent agree that each shall notify TMHP within five (5) working days of both the commencement and termination, by either party, of this Agreement.

Fiscal Agent reserves the right to collect all fees that are due for any claims submitted to, and paid by, TMHP for any period preceding notice of termination or actual termination whichever occurs last. Termination of contract shall not relieve the District of any fees payable pursuant to Exhibit C, District Fee Schedule.

District agrees and acknowledges that it owes Fiscal Agent an early termination fee (as set out in Exhibit C) if (i) this Agreement terminates prior to the end of any three-year term; (ii) this Agreement is terminated because District is no longer a TASB member; (iii) District fails to pay the fees owed to TASB (after receiving notice and an opportunity to cure); or (iv) District has violated TASB's intellectual property rights. This early termination fee will not come into effect if District completes a three-year term but does not allow the Agreement to renew.

#### ARTICLE IX. LIMITATION OF LIABILITY; RELATIONSHIP OF PARTIES

It is agreed that, to the fullest extent permitted by law, Fiscal Agent shall not be liable for any damages whatsoever (including, without limitation, damages for loss of profits and/or savings, business interruption, loss of business information or other pecuniary losses) arising from use of

or inability to use the SMART© Program. Notwithstanding the foregoing, Fiscal Agent's liability under this Agreement is limited to the fees paid by the District to Fiscal Agent under this Agreement for one year.

It is further agreed that Fiscal Agent is an independent contractor and that nothing in this Agreement shall be construed to create the relationship of employer and employee, fiduciary, partner or joint venture.

#### ARTICLE X. CONFIDENTIALITY

Confidential information includes but is not limited to SMART© Information (as defined below), any form or other document provided by Fiscal Agent in conjunction with the SMART© Services and any other information identified as confidential by Fiscal Agent.

The District acknowledges that the SMART© Program and the supporting documentation and programming (collectively, the "SMART© Information") are confidential in nature and constitute trade secrets belonging to Fiscal Agent. Except as mandated by law, the District agrees to protect all such confidential information and furthermore shall instruct its employees and agents of the District's obligations under this Agreement and ensure that they comply with such obligations. District agrees not to sell, rent, license, sublicense, distribute, transfer, directly or indirectly permit the sale, rental, licensing, sublicensing, distribution or transfer of any of the SMART© Information to any other party at any time. District agrees to use its best efforts to prevent inadvertent disclosure of confidential information to any third party at any time.

Fiscal Agent agrees to hold private the information provided by the District and will not release the District's data, other than as contemplated by this Agreement, unless Fiscal Agent is legally required to do so or the District gives its written consent to release such data.

#### ARTICLE XI. WARRANTIES

The District represents and warrants that:

- A. This Agreement is executed with full knowledge and understanding of its terms and meanings by the District and the individual signing this Agreement is authorized to do so;
- B. This Agreement may be executed in multiple originals (for the purposes of this Agreement, a facsimile of a signed Agreement shall constitute an original), all of which are the same Agreement and any of which shall be considered an original instrument; and
- C. It will submit to Fiscal Agent true and correct claim information that contains only those services, supplies, or equipment District has actually provided to recipients. District understands that it may be criminally convicted and subject to recoupment of overpayments and imposed penalties for submittal of false, fraudulent, or abusive billings, directly or indirectly, to Fiscal Agent or to Medicaid or any Medicaid contractor. District further warrants that Fiscal Agent may rely upon any information furnished by it and consider such information to be true, accurate, and complete.

The District understands and agrees that the SMART© Services (including but not limited to the SMART© Program) are provided "as is" and "as available." TASB expressly disclaims all warranties of any kind, express or implied, including without limitation any warranty of merchantability or fitness for a particular purpose. TASB makes no warranty or representation regarding TASB's services, any information, materials, goods or services obtained through TASB or that TASB's services will meet the District's requirements, or be uninterrupted, timely, secure or error free. Use of SMART© TASB shall not be responsible for any damage to the District resulting from the use of TASB's SMART© Services.

Fiscal Agent represents and warrants that it will not alter or add procedures, services, codes or diagnoses to billing information received from District when submitting claims on behalf of District. Fiscal Agent understands that it may be criminally convicted and subject to recoupment of overpayments and imposed penalties for submittal of false, fraudulent or abusive billings.

#### ARTICLE XII. MISCELLANEOUS

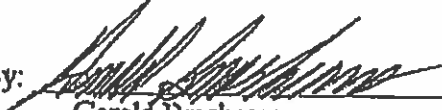
- A. This Agreement is governed by the laws of the State of Texas and venue for any action arising out of this Agreement shall be in Travis County, Texas.
- B. This Agreement comprises the entire Agreement between Fiscal Agent and the District concerning the subject matter of this agreement.
- C. The provisions of Articles IX (Limitation of Liability), X (Confidentiality) and XI (Warranties) shall survive the termination of this Agreement.
- D. Any previous Medicaid Billing Services Agreement between the parties is hereby superseded and this Agreement shall control as of this effective date of this Agreement.
- E. If any portion of this Agreement shall be declared or held unenforceable for any reason, the remaining portions hereof shall continue in full force and effect.
- F. The parties agree that, in the event of a lawsuit relating to this Agreement, the prevailing party is entitled to recover reasonable attorney's fees that are equitable and just.

[Signatures follow on next page]

In WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date(s) set forth herein.

Texas Association of School Boards, Inc.  
("Fiscal Agent")

Austin Independent School District  
("District")

By:   
Gerald Brashears  
Director of Business Services

By:   
Authorized Representative

Title: Board President

Date: 7/21/2010

Date: 8/26/10

## EXHIBIT A1

### FISCAL AGENT RESPONSIBILITIES ELECTRONIC CLAIM SUBMISSION

- 1) If required by TMHP or HHSC, enroll and be approved as a Third Party Billing Vendor prior to submitting claims on behalf of District.
- 2) Supply District with access to the SMART<sup>®</sup> Program and related online user documentation.
- 3) Submit student information monthly to HHSC or TMHP for electronic eligibility match. Provide district with current eligibility report.
- 4) Provide user training, software training, provider training and ongoing program review.
- 5) Follow-up on rejected and denied claims.
- 6) Support the SMART<sup>®</sup> Services by:
  - a. Maintaining a toll-free hotline during normal TASB business hours.
  - b. Updating the SMART<sup>®</sup> Program as required by changes in law or regulations.
  - c. Conducting members' conferences, as needed, to obtain input on software enhancement and provide any additional training.
  - d. Maintaining appropriate records and files including safe site storage for data stored at TASB.
- 7) Submit claim data to TMHP.
- 8) Issue monthly invoice for a percentage of the amount paid by TMHP/Medicaid as detailed in District Fee Schedule in Exhibit C.
- 9) Comply with federal and state guidelines concerning issues of confidentiality of student information.
- 10) Provide District with access to District's books and records that may be stored at TASB's offices.

## EXHIBIT A2

### DISTRICT RESPONSIBILITIES ELECTRONIC CLAIM SUBMISSION

- 1) Complete and submit any required Medicaid enrollment forms and Medicaid provider agreements.
- 2) Obtain Medicaid provider identification number.
- 3) Execute automated billing agreement and electronic remittance and status ("ER&S") agreement as required by TMHP to allow TASB to file claims and receive ER&S reports (HIPPA Form 835 or its successor) electronically on District's behalf. Fiscal Agent shall be District's exclusive agent for purposes of submitting claims and receiving ER&S reports, and District agrees to not designate an entity other than Fiscal Agent as its agent for these purposes on an ER&S agreement or other TMHP or HHSC form at any time this Agreement is in effect.
- 4) Verify student eligibility for each claim submitted.
- 5) Comply with any and all requirements set forth by the Texas Education Agency and HHSC regarding the School Health and Related Services (SHARS) program, including but not limited to provider procedures as outlined in the *2007 TMHP Medicaid Provider Procedure Manual* and any revisions or amendments thereto
- 6) Input all required data into the SMART<sup>®</sup> Program to create and maintain student, therapist, and service files.
- 7) Input all required data into the SMART<sup>®</sup> Program for each session for which Medicaid reimbursement will be sought.
- 8) Input all required data to the Fiscal Agent electronically at least 60 days prior to the date on which the claim will expire. Fiscal Agent assumes no responsibility for any claim submitted after this time period.
- 9) Execute any certificates of compliance, including but not limited to letters certifying local expenditures, as required by TMHP or HHSC.
- 10) Complete annual cost reports as required by TMHP or HHSC.
- 11) Maintain all source documentation necessary to fully document services for which claims were filed, the medical necessity of the services, and costs included in any cost reports or other documents used to determine a payment rate or fee.
- 12) Abide by the terms of this Agreement.
- 13) Warrant to the best of the knowledge of the District, its agents, officers and employees, the accuracy, reliability, and completeness of any and all claim information submitted to



## EXHIBIT C

### TASB SMART SERVICE THREE YEAR AGREEMENT DISTRICT FEE SCHEDULE

District agrees to pay Fiscal Agent an amount equal to 6% of all claims submitted to, and paid by, TMHP as a fee for the SMART Services. The maximum fee shall be \$50,000 per fiscal year, provided, however, that this maximum will not apply if District owes an early termination fee as provided below. Fiscal year is defined as September 1 to August 31.

This fee does not apply to payments by HHSC (either directly or through TMHP) to District, or payments by District to HHSC (directly or through TMHP) made in connection with a specific SHARS Annual Cost Report, Cost Reconciliation and Settlement Process ("Settlement"). However, if TMHP and/or HHSC determines as a result of cost information received through the Settlement process to increase or decrease District's SHARS reimbursement rate prospectively, the Fiscal Agent fee will be billed, and District shall pay Fiscal Agent, on such new reimbursement rate as provided in this schedule.

Payments to Fiscal Agent are due within 45 days of the date Fiscal Agent bills District.

A late charge amounting to the maximum interest allowed by law shall begin to accrue daily on the first (1st) day following the due date, and continue until the fees and late charges are paid in full.

District agrees and acknowledges that it owes Fiscal Agent an early termination fee equal to an additional 1% of all claims submitted to, and paid by, TMHP if (i) District terminates this Agreement prior to the end of any three-year term; (ii) this Agreement is terminated because District is no longer a TASB member; (iii) District fails to pay the fees owed to TASB (after receiving notice and an opportunity to cure); or (iv) District has violated TASB's intellectual property rights. District agrees that TASB is entitled to the early termination liquidated damages because the damages attributable to TASB from the early termination are difficult to ascertain and the early termination fee is a reasonable estimation of such damages. The SMART Services fee maximum provided for above does not apply if District owes an early termination fee. This early termination fee will not come into effect if District completes a three-year term but does not allow the Agreement to renew.

Medicaid Billing Services

RECOMMENDATION

That AISD enter into a contract with the Texas Association of School Boards (TASB) for use of SMART Software SHARS Billing System in the amount of 6% of SHARS claims submitted to, and paid by, TMHP with a maximum fee of \$50,000 per fiscal year.

BACKGROUND INFORMATION

The Medicaid Department is submitting a new three (3) year self renewing contract to the AISD School Board with the recommendation that the contract be executed beginning the fiscal year 2010-2011. TASB has in excess of 100 school districts and co-ops that currently use the SMART software system to bill for SHARS services. The AISD School Board approved customization of the SMART software to increase efficiency, accuracy, and reduce human error. The customization is in the final stages of completion and implementation. This is a sole source item.

ADMINISTRATIVE CONSIDERATION

The maximum fee of \$50,000 per year will decrease AISD's consulting fees in future budgeting periods. AISD has received between \$1.2 million and \$1.5 million dollars during 2006-2007, 2007-2008, 2008-2009 and 2009-2010 fiscal school years from TMHP for SHARS billable services.

CONTACT PERSONS

Linda Hoerling  
Norman Self  
Nicole Conley-Abram