

**Grace School District No. 148
HIPAA BUSINESS ASSOCIATE AGREEMENT**
(See also Policy No. 421, HIPAA Privacy Rule)

THIS AGREEMENT is entered into on this ____ day of _____, 2014 by and between _____ SCHOOL DISTRICT NO. ____ doing business at _____, _____, Idaho _____, validly organized as a body corporate and politic hereby authorized to enter into contracts pursuant to Idaho Code Title 33, Chapter 6, and is a Covered Entity under the provisions of the Health Insurance Portability and Accountability Act (hereinafter "Covered Entity"), and _____, a Business Associate under the provisions of the Health Insurance Portability and Accountability Act and doing business at _____, _____, Idaho _____ (hereinafter "Business Associate").

WHEREAS, Covered Entity will make available and/or disclose to Business Associate certain employee Protected Health Information (PHI), along with goods or services that are being provided by the Business Associate to the Covered Entity; and

WHEREAS, Business Associate will have access to and/or receive from Covered Entity certain PHI that can be used or shared only in agreement with this Agreement and the U.S. Department of Health and Human Services (HHS) Privacy Regulations.

NOW, THEREFORE, the Covered Entity and the Business Associate agree to the following for the mutual benefit of each:

1. DEFINITIONS. The following words are defined below:

1.01 Agreement shall refer to this document.

1.02 Business Associate shall mean _____, the organization receiving the Information.

1.03 Covered Entity shall mean _____ School District No. _____, the organization providing or making available the Information.

1.04 Designated Record Set shall mean the PHI information regarding enrollment, payment, claims adjudication, case/medical records systems, and any other records used in whole or in part to make decisions about an individual.

1.05 HHS Privacy Regulations or Privacy Rule shall mean the Standards for Privacy of Individually Identifiable Health Information as defined at 45 C.F.R. Parts 160 and 164, Subparts A and E.

- 1.06 Individual** shall mean the person who is the subject of the Protected Health Information, and has the same meaning as the term “individual” as defined in 45 C.F.R. Section 164.501, and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. Section 164.502(g).
- 1.07 Parties** shall mean Business Associate and Covered Entity.
- 1.08 Protected Health Information** or **PHI** shall have the same meaning as the term “protected health information” as defined in 45 U.S.C. Section 164.501, but is limited to any such information created or received by Business Associate from or on behalf of Covered Entity.
- 1.09 Required by Law** shall have the same meaning as the term “required by law” found at 45 C.F.R. Section 164.501.
- 1.10 Secretary** shall mean the Secretary of the U.S. Department of Health and Human Services and/or his designee.

2. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE.

- 2.01** Business Associate agrees to not use or disclose PHI other than as permitted or required by the Agreement or as Required by Law.
- 2.02** Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the PHI other than as provided by this Agreement.
- 2.03** Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement.
- 2.04** Business Associate agrees to report to Covered Entity any use or disclosure of the PHI not provided for by this Agreement of which it becomes aware.
- 2.05** Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides PHI received by Business Associate on behalf of Covered Entity agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.
- 2.06** Business Associate agrees to make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 C.F.R. Section 164.526 at the request of Covered Entity or an Individual, and in the time and manner agreed between the parties.
- 2.07** Business Associate agrees to make internal practices, books, and records, including policies and procedures related to PHI, relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, Covered Entity available to the Covered Entity or to the Secretary, in a time and

manner agreed between the parties, or designated by the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.

- 2.08** Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. Section 164.528.
- 2.09** Business Associate agrees to provide to Covered Entity or an Individual, in the time and manner agreed by the parties, information collected in accordance with Section 2.08 of this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. Section 164.528.
- 2.10** Business Associate shall provide an accounting of all claims to Covered Entity by _____, 2004, and each month thereafter by the ____ day of the month.

3. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE.

3.01 Specific Purpose. Except as otherwise limited in the Agreement, Business Associate may use or disclose PHI on behalf of, or to provide services to, Covered Entity for the following purposes, if such use or disclosure of PHI would not violate the Privacy Rule if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity:

3.01.01 Covered Entity contracts with Business Associate for the implementation of the agreement of Covered Entity with employees for the payment of certain deductibles buy downs, reimbursement of specified deductibles and out-of-pocket expenses of employees or members of the family of employees of the Covered Entity.

3.01.02 *(If there is an underlying written service agreement or contract, it should be referenced here.)*

4. SPECIFIC USE AND DISCLOSURE PROVISIONS.

4.01 Except as otherwise limited in this Agreement, Business Associate may use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.

4.02 Except as otherwise limited in this Agreement, Business Associate may disclose PHI for the proper management and administration of the Business Associate, provided that disclosure are Required by Law or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the person notifies

the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

4.03 Except as otherwise limited in this Agreement, Business Associate may use PHI to provide data aggregation services to Covered Entity as permitted by 44 C.F.R. Section 164.504(e)(2)(i)(B).

4.04 Business Associate may use PHI to report violations of law to appropriate federal and state authorities, consistent with 45 C.F.R. Section 164.502(j)(1)

5. OBLIGATIONS AND ACTIVITIES OF COVERED ENTITY.

5.01 Provisions for Covered Entity to Inform Business Associate of Privacy Practices and Restrictions.

5.01.01 Covered Entity shall notify Business Associate of any limitation(s) in its notice or privacy practices of Covered Entity in accordance with 45 C.F.R. Section 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.

5.01.02 Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.

5.01.03 Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. Section 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

5.01.04 Covered Entity shall pay Business Associate on a quarterly (*monthly*) basis, on or before the ___ of the month, the amount of _____ (*at the rate of* _____).

6. PERMISSIBLE REQUESTS BY COVERED ENTITY.

6.01 Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity, including use and disclosure of PHI for data aggregation or management as requested by the Covered Entity, and for administrative activities of Business Associate.

7. TERM AND TERMINATION.

7.01 The term of this Agreement shall be effective as of _____, 2004, and shall terminate when all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered

Entity, is destroyed or returned to Covered Entity. If it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Agreement.

8. TERMINATION FOR CAUSE. Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall either:

8.01 Provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement, if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity;

8.02 Immediately terminate this Agreement if the Business Associate has breached a material term of this Agreement and cure is not possible; or

8.03 If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.

9. EFFECT OF TERMINATION.

9.01 Except as provided in paragraph 9.02 of this section, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.

9.02 In the event Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual agreement that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

10. MISCELLANEOUS PROVISIONS.

10.01 Regulatory References. A reference in this Agreement to a section in the Privacy Rule means the section as in effect or as amended.

10.02 Amendment. The parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.

10.03 Survival. The respective rights and obligations of Business Associate under Section 9 of this Agreement shall survive the termination of this Agreement.

10.04 Interpretation. Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy Rule.

10.05 Choice of Law. This Agreement shall be governed by the laws of the State of Idaho.

10.06 Change of Address. Either party may at any time change its address for notification purposes by mailing a notice stating the change and giving the new address.

10.07 Entire Agreement. This Agreement consists of this document, and is the entire agreement between the parties regarding compliance with the Privacy Rule. There are no other agreements that are not fully stated in this Agreement and no change, release, or discharge of responsibilities arising under this Agreement shall be valid unless it is in writing and carried out by the party against whom such change, release, or discharge is sought to be enforced.

10.08 Independent Contractor. The relationship of Covered Entity and Business Associate is that of independent contractors. All acts performed by Business Associate shall be deemed to be performed in its capacity as an independent contractor.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

COVERED ENTITY: _____ SCHOOL DISTRICT NO. _____

By _____
Chairman, Board of Trustees

BUSINESS ASSOCIATE: _____

By _____

Its _____