

BUSINESS ASSOCIATE AGREEMENT

This BUSINESS ASSOCIATE AGREEMENT (this "Agreement") is entered into by and between GABRIEL, ROEDER, SMITH & COMPANY, a Michigan corporation ("GRS") and The School Board of Broward County, Florida (the "Plan") (together, the "Parties"), effective as provided below.

RECITALS

WHEREAS, the Plan is a "covered entity" within the meaning of the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations (45 CFR Parts 160-164) ("HIPAA") and the requirements of the Health Information Technology for Economic and Clinical Health Act, as incorporated in the American Recovery and Reinvestment Act of 2009 (the "HITECH Act"; HIPAA and the HITECH Act are collectively referred to in this Agreement as "HIPAA/HITECH"); and

WHEREAS, GRS has entered into an agreement with The School Board of Broward County, Florida acting on behalf of the Plan, to provide certain consulting and/or actuarial services in connection with the Plan (the "Service Agreement"); and

WHEREAS, HIPAA/HITECH requires covered entities such as the Plan to obtain and document satisfactory assurances from "business associates" (as defined therein) regarding appropriate safeguarding of certain "protected health information" (as defined therein) received or created by the business associate (a "BA Agreement"); and

WHEREAS, GRS, in the performance of its services in connection with the Plan, is a "business associate" within the meaning of HIPAA/HITECH; and

WHEREAS, the Parties desire to enter into an agreement intended to satisfy the BA Agreement requirement as and to the extent such requirement may be applicable.

NOW, THEREFORE, in consideration of the premises and the respective covenants and agreements herein contained, the Parties agree as follows:

AGREEMENT

1. *Definitions*

Capitalized terms not expressly defined in this Agreement shall have the meanings as defined in HIPAA/HITECH. For purposes of this Agreement:

- (a) "**Data Aggregation**" shall have the same meaning as the term "data aggregation" in 45 CFR 164.501.
- (b) "**Designated Record Set**" shall have the same meaning as the term "designated record set" in 45 CFR 164.501 in respect of the Plan.
- (c) "**Effective Date**" shall have the meaning as set forth in Section 5(a) of this Agreement.

- (d) **"Individual"** shall have the same meaning as the term "individual" in 45 CFR 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).
- (e) **"Plan Administrator"** shall mean the person(s) or office(s) with the discretionary authority to act on behalf of the Plan on matters relating to HIPAA/HITECH and this Agreement.
- (f) **"HIPAA/HITECH"** shall have the meaning as set forth in the RECITALS portion of this Agreement.
- (g) **"Protected Health Information"** shall have the same meaning as the term "protected health information" in 45 CFR 160.103, but limited to the information received or created by GRS from or on behalf of the Plan.
- (h) **"Required by Law"** shall have the same meaning as the term "required by law" in 45 CFR 164.103, to the extent not preempted by Federal law.
- (i) **"Secretary"** shall mean the Secretary of the Department of Health and Human Services or his designee.
- (j) **"Service Agreement"** shall have the meaning as set forth in the RECITALS portion of this Agreement.
- (k) **"Significant Breach"** shall mean a pattern of activity or practice that constitutes a material breach or violation of this Agreement in the written opinion of legal counsel for the Plan. For purposes hereof, a "pattern of activity or practice" shall consist of at least three (3) discrete acts and/or omissions within a period of not more than 180 consecutive days.

2. **Obligations of GRS**

GRS agrees to:

- (a) not use or disclose Protected Health Information other than as permitted or required by this Agreement or as Required By Law;
- (b) use appropriate safeguards and comply, where applicable, with the Security Standards for the Protection of Electronic Protected Health Information set forth in 45 CFR Part 164, Subpart C with respect to electronic protected health information, to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement;
- (c) report to the Plan Administrator any use or disclosure of Protected Health Information not provided for by this Agreement of which it becomes aware, including breaches of unsecured Protected Health Information as required by 45 CFR 164.410;
- (d) in accordance with 45 CFR 164.502(e)(1)(ii), ensure that any subcontractors that create, receive, maintain, or transmit Protected Health Information on behalf of GRS agrees to the same restrictions and conditions that apply through this Agreement to GRS

with respect to such information; provided that the Plan shall not have any right to disapprove any subcontractors of GRS or to review any agreements with such subcontractors, except to the extent specifically provided herein or in the Service Agreement;

- (e) provide, in a commercially reasonable time and manner, access to Protected Health Information to the Plan Administrator to the extent necessary to meet the requirements under 45 CFR 164.524, provided that (i) such access shall be provided only to the extent such Protected Health Information is in the possession of GRS and maintained in a Designated Record Set and (ii) the Plan shall reimburse to GRS any of the following costs incurred in providing such access:
 - (i) copying (including the cost of supplies and labor);
 - (ii) postage; and
 - (iii) preparation of an explanation or summary of the Protected Health Information;
- (f) make, in a commercially reasonable time and manner, any amendment(s) to Protected Health Information that the Plan Administrator directs or agrees to pursuant to 45 CFR 164.526, provided that such amendment(s) shall be made only to the extent such Protected Health Information is in the possession of GRS and maintained in a Designated Record Set;
- (g) make available to the Plan Administrator, in a commercially reasonable time and manner, information in the possession of GRS as and to the extent required for the Plan to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528;
- (h) to the extent GRS is to carry out the Plan's obligations regarding Privacy of Individual Identifiable Health Information set forth in 45 CFR Part 164, Subpart E (the "Privacy Requirements"), comply with the Privacy Requirements that apply to the Plan in GRS' performance of such obligations; and
- (i) make internal practices, books, and records relating to the use and disclosure of Protected Health Information received from the Plan, or created or received by GRS on behalf of the Plan, available to the Secretary for purposes of the Secretary determining the Plan's compliance with the Privacy Requirements.
- (j) For the Breach of Unsecured PHI in its possession:
 - 1. GRS will perform a Risk Assessment to determine if there is a low probability that the PHI has been compromised. GRS will provide Plan with documentation showing the results of the Risk Assessment. The Risk Assessment will consider at minimum the following factors:
 - a. The nature and extent of the PHI involved, including the types of identifiers and the likelihood of re-identification;
 - b. The unauthorized person who used the PHI or to whom the disclosure was made;
 - c. Whether the PHI was actually acquired or viewed; and

- d. The extent to which the risk to the PHI has been mitigated.
 - 2. GRS will prepare and distribute, at its own cost, any and all required notifications under Federal and Florida law, or reimburse Plan any direct costs incurred by Plan for doing so.
 - 3. GRS shall be responsible for all fines or penalties incurred for failure to meet Breach notice requirements pursuant to Federal and/or Florida law.
 - 4. GRS agrees to report to Plan all Security Incidents (as defined by 45 C.F.R. Part 164.304 and in accordance with applicable Florida law) of which it becomes aware. GRS agrees to report the Security Incident to Plan as soon as reasonably practicable, but not later than 10 business days from the date the GRS becomes aware of the incident.
- (k) GRS agrees to ensure that, and obtain assurance from, any and all agents, including subcontractors (excluding entities that are merely conduits), to whom it provides PHI, to agree to the same restrictions and conditions that apply to GRS with respect to such information. All agents and subcontractors engaged by GRS that create, maintain, receive or transmit PHI must comply with the HIPAA Rules, including the rules to extend the requirements to the agent's or subcontractor's subcontractors.

3. Permitted Uses and Disclosures by GRS

- (a) General Use and Disclosure Provisions. Except as otherwise limited in this Agreement, GRS may use or disclose Protected Health Information to perform its duties, functions, activities, or services for, or on behalf of, the Plan, provided that such use or disclosure would not violate (i) HIPAA/HITECH if done by the Plan or (ii) the minimum necessary policies and procedures of the Plan as and to the extent intended to comply with HIPAA/HITECH and communicated by the Plan Administrator to GRS.
- (b) Specific Use and Disclosure Provisions.
- (i) GRS may use Protected Health Information for the proper management and administration of GRS or to carry out the legal responsibilities of GRS.
 - (ii) Except as otherwise restricted by this Agreement, GRS may disclose Protected Health Information for the proper management and administration of GRS or to carry out the legal responsibilities of GRS, provided that:
 - (A) disclosures are Required By Law, or
 - (B) GRS obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidentially 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 GRS of any instances of which it is aware in which the confidentiality of the information has been breached.
 - (iii) Except as otherwise limited in this Agreement, GRS may use Protected Health Information to provide Data Aggregation services as permitted by 45 CFR 164.504(e)(2)(i)(B).

- (iv) GRS may use or disclose Protected Health Information to report violations of law to appropriate Federal and/or State authorities, consistent with 45 CFR 164.502(j).
- (v) Except as otherwise limited in this Agreement, GRS may disclose Protected Health Information to other “business associates” (within the meaning of HIPAA/HITECH) of the Plan (i) as directed by the Plan Administrator or (ii) to perform its duties under the Service Agreement. Notwithstanding any provision hereof or any other prior agreement by the Parties, it shall be the Plan’s sole responsibility (and not GRS’s responsibility) to ensure that the Plan has entered into appropriate business associate agreements with (or has obtained similar written assurances from) its business associates.
- (vi) Except as otherwise limited in this Agreement, GRS may disclose Protected Health Information to the Plan’s sponsoring employer(s) as directed by the Plan Administrator; provided that the Plan Administrator shall include in such direction the specific person(s) or official(s) to whom such disclosure shall be made. Notwithstanding any provision hereof or any other prior agreement by the Parties, it shall be the Plan’s sole responsibility (and not GRS’s responsibility) to ensure that the Plan has, in its official plan document, an appropriate provision regarding disclosures of Protected Health Information to any sponsoring employer of the Plan.

4. *Obligations of the Plan and Plan Administrator*

- (a) General. Except as otherwise specifically provided under this Agreement, the Plan shall not request or permit GRS to (and shall not cause the Plan Administrator to request or permit GRS to) use or disclose Protected Health Information in any manner that may not be permissible under HIPAA/HITECH if done by the Plan.
- (b) Notification of Privacy Practices and Restrictions. The Plan shall cause the Plan Administrator to promptly notify GRS of:
 - (i) the name or office of each person authorized to act as the Plan Administrator for purposes of this Agreement, and any changes thereto;
 - (ii) any limitation(s) in the Plan’s notice of privacy practices in accordance with 45 CFR 164.520, to the extent that such limitation may affect GRS’s use or disclosure of Protected Health Information;
 - (iii) any changes in, or revocation of, permission by an Individual regarding use or disclosure of Protected Health Information relating to that Individual, to the extent that such changes may affect GRS’s use or disclosure of Protected Health Information;
 - (iv) any restriction to the use or disclosure of Protected Health Information that the Plan has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect GRS’s use or disclosure of Protected Health Information; and

- (v) any policies and procedures of the Plan to the extent that such policies or procedures may affect GRS' use or disclosure of Protected Health Information.

5. Term and Termination

- (a) Term. The term of this Agreement shall be for a period commencing as of the later of (i) June 4, 2019 or (ii) the first date as of which HIPAA/HITECH applies to the Plan (the "Effective Date"), and ending when all of the Protected Health Information provided by the Plan to GRS, or created or received by GRS on behalf of the Plan, is destroyed, returned to the Plan or further protected in accordance with the termination provisions in this Section 5.
- (b) Termination for Cause. Upon the Plan Administrator's knowledge of a Significant Breach of GRS's obligation under this Agreement and subject to Section 5(c) hereof, the Plan Administrator may commence termination of this Agreement by providing a notice of termination to GRS. Notwithstanding the foregoing, this Agreement shall be considered to have been terminated pursuant to this Section 5(b) only if, prior to such notice of termination:
 - (i) the Plan Administrator shall have given to GRS written notice describing with specificity the Significant Breach;
 - (ii) a period of 60 days from and after the giving of such notice shall have elapsed without GRS's having substantially cured or remedied such reason for termination during such 60-day period, unless such reason for termination cannot be substantially cured or remedied within 60 days, in which case the period for remedy or cure shall be extended for a reasonable time (not to exceed 60 days), provided that GRS has made and continues to make a diligent effort to effect such remedy or cure; and
 - (iii) a final determination shall have been made by the Plan Administrator that the Significant Breach persists, following a meeting at which GRS shall be entitled to appear and contest the determination.
- (c) Condition Precedent. Upon receipt of a notice of termination pursuant to Section 5(b) hereof, or for termination of this Agreement for any other reason, GRS shall return or destroy all Protected Health Information received from the Plan, or created or received by GRS on behalf of the Plan, that GRS still maintains in any form, and shall retain no copies of such information, except that if GRS determines that such return or destruction is not feasible, GRS shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible.
- (d) Report to Secretary of HHS. If, in the reasonable determination of the Plan Administrator, termination of the Agreement pursuant to Section 5(b) hereof is not feasible, the Plan Administrator shall report the Significant Breach to the Secretary.

6. Other Provisions

- (a) Separate from Service Agreement. Notwithstanding anything herein to the contrary, this Agreement shall not be construed, and is not intended, to be a part of any Service Agreement or to otherwise impose on GRS any duties, responsibilities, obligation whatsoever in respect of the administration of the Plan, including any duties, responsibilities or obligation of the Plan pursuant to HIPAA/HITECH.
- (b) No Liability. To the fullest extent permitted by law, GRS shall be under no liability for any use or disclosure made in accordance with the directions of the Plan Administrator or other Plan representatives.
- (c) No Duty to Question. Notwithstanding anything herein to the contrary, GRS shall not be under any duty to question any directions received from the Plan Administrator, nor to review in any respect the manner in which any fiduciary of the Plan exercises its authority and discharges its duties with respect to the Plan.
- (d) Amendment. The Parties agree to take such action to amend this Agreement from time to time as is necessary for the Plan to comply with the requirements of HIPAA/HITECH.
- (e) Ambiguities. Any ambiguity in this Agreement shall be resolved in a manner that is consistent with the applicable requirements under HIPAA/HITECH.
- (f) Notice. Any notice required to be given hereunder shall be in writing and delivered by hand or sent by facsimile, registered or certified mail, return receipt requested, or by air courier, to the address (or fax number) cited in the signature block of this Agreement or to such other address (or fax number) as shall be specified by like notice by either Party, and shall be deemed given only when received.
- (g) Headings. The title, headings, and subheadings of this Agreement are solely for the convenience of the Parties and do not affect the meaning or interpretation of any provision of this Agreement.
- (h) Entire Agreement. This Agreement contains the entire understanding between the Plan and GRS with respect to the subject matter hereof and, except as specifically provided herein, cancels and supersedes any and all other agreements between the Plan and GRS with respect to the subject matter hereof. Any amendment or modification of this Agreement shall not be binding unless in writing and signed by both the Plan and GRS.
- (i) Severability. In the event that any provision of this Agreement is determined to be invalid or unenforceable, the remaining terms and conditions of this Agreement shall be unaffected and shall remain in full force and effect, and any such determination of invalidity or unenforceability shall not affect the validity or enforceability of any other provision of this Agreement.
- (j) No Benefit to Others. The representations, covenants and agreements contained in this Agreement are for the sole benefit of the Parties, and they shall not be construed as

conferring, and are not intended to confer, any rights on any other persons.

(k) Counterparts. This Agreement may be signed in counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument.

l) Indemnification.

(i) By Plan: Plan agrees to be fully responsible for its acts of negligence or its agent's acts of negligence when acting within the scope of their employment and agrees to be liable for any damages resulting from said negligence.

(ii) By GRS: GRS agrees to indemnify, hold harmless and defend Plan, its agents, servants and employees from any and all claims, judgments, costs and expenses including, but not limited to, reasonable attorney's fees, reasonable investigative and discovery cost, court costs and all other sums which Plan, its agents, servants and employees must pay or become obligated to pay on account of any, all and every claim or demand, or assertion of liability, or any claim or action founded thereon, arising or alleged to have arisen out of any gross negligent act by GRS, its agents, servants or employees; or the gross negligence of GRS's agents when acting within the scope of their employment or agency, whether such claims, judgments, costs and expenses be for damages, damage to property including GRS's property, and injury or death of any person whether employed by GRS, Plan or otherwise.

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IN WITNESS WHEREOF, the Parties have entered into this Business Associate Agreement, effective as of the Effective Date.

FOR PLAN:

(Corporate Seal)

THE SCHOOL BOARD OF BROWARD
COUNTY, FLORIDA

ATTEST:

By _____
Heather P. Brinkworth, Chair

Robert W. Runcie, Superintendent of Schools

Approved as to Form and Legal Content:

Office of the General Counsel

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FOR BUSINESS ASSOCIATE



GABRIEL, ROEDER, SMITH & COMPANY

By: Christine Scheer, Authorized Representative

Signature

Print Name and Title

Valerie Behlow Witness

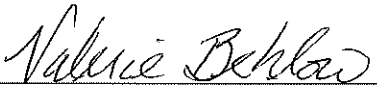
Renee Honak Witness

STATE OF Michigan

COUNTY OF Macomb (Acting in Oakland County)

The foregoing instrument was acknowledged before me by Christine Scheer who is personally known to me or who produced _____ as identification and who did / did not first take an oath this 16 day of July, 2019.

My Commission Expires:


Signature – Notary Public

Valerie Behlow
Notary's Printed Name

N/A
Notary's Commission No.