

**EDUCATION HEALTH SERVICES, LLC**  
**214 Washington St**  
**Claremont, NH 03743**

**BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement (“Agreement”) effective from the date of execution (the “Effective Date”) is entered into by and between Education Health Services, LLC, (the “Business Associate”) and the Covered Entity, (“Covered Entity”).

**RECITALS**

A. Covered Entity has in its possession certain medical information/documentation associated with the analysis, assessment and development of Individualized Educational Program for eligible students that include all individually identifiable health information including demographic data, medical histories, test results, and other information used to identify a patient or provide health care services or healthcare related coverage (“Protected Health Information”).

B. Covered Entity and Business Associate are parties to an agreement (the “Service Agreement”) under which the Business Associate may regularly use and/or disclose Protected Health Information in its performance of Services (defined in the Service Agreement”) for Covered Entity.

C. The parties agree to comply with the Regulations on the Privacy and Security of Individually Identifiable Health Information issued by the Secretary of the US Department of Health and Human Services (“HHS”) as set forth in 45 CFR Part 160 and Part 164 (the “Privacy and Security Regulation”) under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and Title XIII, The Health Information Technology for Economic and Clinical Health Act (“HITECH”), of the American Recovery and Reinvestment Act (“ARRA”).

D. This Agreement sets forth the terms and conditions pursuant to which Protected Health Information that is provided by, or created or received by, the Business Associate from or on behalf of Covered Entity will be handled and kept secure and shall supersede and replace any prior Business Associate Agreement between the parties.

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants and agreements hereinafter addressed, the parties agree as follow:

1. Services. The Business Associate provides services for Covered Entity that involve the use and disclosure of Protected Health Information which services are described in Attachment A hereto and/or in the Services Agreement between the parties. Except as otherwise specified herein, the Business Associate may make any and all uses of Protected Health Information necessary to perform its obligations requested by Covered Entity and set forth in Attachment A and/or under the Services Agreement between the parties. Additionally, Business

Associate may disclose Protected Health Information for the purposes authorized by this Agreement and consistent with minimum necessary requirements under 45 CFR § 164.502(b) only (a) to its employees, subcontractors and agents, in accordance with Section 2(f), or (b) as directed by Covered Entity.

2. Responsibilities of Business Associate. With regard to its use and/or disclosure of Protected Health Information, the Business Associate hereby agrees to do the following:

(a) Use and/or disclose the Protected Health Information only as permitted or required by this Agreement or as otherwise required by law;

(b) Report to the designated privacy officer of Covered Entity immediately, and no later than within three (3) days of discovery, in writing, any use and/or disclosure of the Protected Health Information that is not permitted or required by this Agreement or that constitutes a breach as defined in 45 CFR § 164.402 of which Business Associate becomes aware, or any security incident as defined in 45 CFR 164.304 of which it becomes aware and cooperate with Covered Entity in order that Business Associate takes all necessary actions to fully comply with all mitigation and/or notification obligations under the Privacy and Security Regulations, and, if applicable, report to the New Hampshire Attorney's General Office, according to New Hampshire's Right to Privacy Act RSA 359-C:20;

(c) Use all commercially reasonable efforts to maintain the security of the Protected Health Information and to prevent unauthorized use and/or disclosure of such protected health information. Such security measures shall, at a minimum:

- (i) Implement HIPAA-compliant administrative, physical and technical safeguards, as defined by 45 C.F.R. § 164.304, that reasonably and appropriately protect the confidentiality, integrity and availability of Covered Entity's electronic Protected Health Information that the Business Associate creates, receives, maintains, or transmits on behalf of the Covered Entity;
- (ii) Implement disclosure accounting procedures for Protected Health Information; and
- (iii) Ensure that any agent, including a subcontractor, to whom the Business Associate provides such information or access thereto agrees in writing to implement reasonable and appropriate safeguards as provided herein to protect it;

(d) Be in compliance with all requirements and provisions of the Privacy and Security Regulations, which are expressly incorporated in this Agreement, as such are related to security and applicable as if Business Associate were a "covered entity," as such term is defined in HIPAA or to the extent required by law.

(e) Use its best efforts to implement and maintain technologies and methodologies that render Protected Health Information unusable, unreadable or indecipherable to unauthorized individuals as specified in the HITECH Act.

(f) Require all of its employees, representatives, subcontractors or agents that receive or use or have access to Protected Health Information under this Agreement to agree in writing to adhere to each of the same restrictions and conditions on the use and/or disclosure of Protected Health Information that are set forth herein, including the obligation to return or destroy the Protected Health Information as provided under Section 2(j) hereof, to notify Business Associate immediately upon discovery of a breach or security incident subject to reporting under Section 2(b) above, and to cooperate with Business Associate fully in the event of a breach of the terms of this Agreement.

(g) Make available all records, books, agreements, policies and procedures relating to the use and/or disclosure of Protected Health Information to the Secretary of HHS for purposes of determining Covered Entity's compliance with the Privacy and Security Regulations, subject to attorney-client and other applicable legal privileges.

(h) Within five (5) days of written request from Covered Entity, make available during normal business hours at Business Associate's offices all records, books, agreements, policies and procedures relating to the use and/or disclosure of Protected Health Information to Covered Entity for purposes of enabling Covered Entity to reasonably determine the Business Associate's compliance with the terms of this Agreement.

(i) Within three days (3) of receiving a written request from Covered Entity, provide to Covered Entity such information as is requested by Covered Entity to permit Covered Entity to reasonably respond to a request by an authorized individual (i) for a copy of his or her designated record set, or (ii) provide for an amendment of any record, or (iii) for an accounting of the disclosures of the individual's Protected Health Information in accordance with 45 C.F.R. § 164.524, §164.526 and §164.528, respectively, and related guidance made by the Secretary of HHS from time to time.

(j) Return to Covered Entity or destroy, as directed by Covered Entity, within ten (10) days of the termination of this Agreement, all Protected Health Information in Business Associate's possession and retain no copies or back-up tapes or, in the event that Protected Health Information cannot be returned or destroyed:

- (i) Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic Protected Health Information to prevent use or disclosure of the Protected Health Information, for as long as Business Associate retains the Protected Health Information;
- (ii) Not use or disclose the Protected Health Information retained by Business Associate other than for the purposes for which such Protected Health Information was retained

and subject to the same conditions set out herein prior to termination; and

- (iii) Destroy the Protected Health Information retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities.

(k) Mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement and to assist Covered Entity in any notifications related to such violations as necessary to comply with the Privacy and Security Regulations.

(l) Defend, hold blameless, and indemnify Covered Entity, its directors, officers, agents, employees, and assigns from any loss, cost, or damage, including attorney's fees and the cost of providing notification to authorized individuals and others as required by law, by reason of any civil, criminal, administrative action, or unauthorized use or disclosure of whatsoever nature or kind arising out of, or as a result of, a material breach of the provisions of this Agreement by the Business Associate, its employees, agents, or subcontractors. Business Associate shall furnish proof of liability insurance coverage to Covered Entity upon request.

(m) Cooperate fully, completely, and immediately with any requests from Covered Entity for Protected Health Information in the Business Associate's possession that may arise in the course of responding to any subpoenas, search warrants, or other forms of legal process.

3. Responsibilities of Covered Entity. With regard to the use and/or disclosure of Protected Health Information by the Business Associate, Covered Entity hereby agrees:

(a) To inform the Business Associate of any material changes in the form of notice of privacy practices that Covered Entity provides to individuals pursuant to 45 CFR 164.520 and the HITECH Act and provide the Business Associate a copy of the notice currently in use;

(b) To inform the Business Associate of any relevant changes in, or withdrawal of, the consent or authorization provided to Covered Entity by individuals whose Protected Health Information may be used and/or disclosed by Business Associate under this Agreement pursuant to 45 CFR 164.506 or 164.508 and the HITECH Act; and

(c) To notify the Business Associate, in writing and in a timely manner, of any relevant restrictions on the use and/or disclosure of Protected Health Information agreed to by Covered Entity as provided for in 45 CFR 164.522 and the HITECH.

4. Mutual Representation and Warranty. Each party represents and warrants to the other party that all of its employees, agents, representatives and members of its workforce, whose services may be used to fulfill obligations under this Agreement, are or shall be

appropriately informed of the terms of this Agreement and are under legal obligation to fully comply with all provisions of this Agreement.

5. Terms and Termination.

(a) Term. This Agreement shall become effective on the Effective Date and shall continue to be effect until all obligations of the parties have been met, unless terminated as provided herein or by mutual agreement of the parties.

(b) Termination with Cause by Covered Entity. Covered Entity may immediately terminate this Agreement and any related agreement if it determines that the Business Associate has breached a material provision of this Agreement. Alternatively, Covered Entity may choose to: (i) provide the Business Associate with a ten (10) day written notice of the existence of an alleged material breach; and (ii) afford the Business Associate an opportunity to cure said alleged material breach upon mutually agreeable terms. Failure to cure in the manner set forth in this paragraph is grounds for immediate termination of the Agreement. If termination is not feasible, Covered Entity shall report the breach to the Secretary of HHS. This Agreement will automatically terminate without any further action of the parties upon the termination or expiration of the Service Agreement between parties.

(c) Termination without Cause. Either party may terminate this Agreement without cause by sixty (60) days written notice to the other party.

(d) Effect of Termination. Upon termination of this Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity in accordance with Section 2(j) above. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Within thirty (30) days following any such termination, Covered Entity shall cooperate with Business Associate to assure that Business Associate has been fully compensated in accordance with the Service Agreement for all services provided through the Termination Date.

6. Survival. The respective rights and obligations of Business Associate and Covered Entity under the provision of Sections 2(g), 2(j), 2(k), and 2(l) shall survive the termination of this Agreement indefinitely.

7. Amendment. This Agreement may not be modified or amended, except in writing as agreed to by each party. The parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for either party to comply with the requirements of the Privacy and Security Regulation, HITECH, HIPAA and subsequent additions or amendments related to such laws and any other law.

8. No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor anything herein shall confer, upon any person other than the parties hereto any rights, remedies, obligations, or liabilities whatsoever.

9. Notice. Any notice to be given hereunder shall be made via US mail or express courier, or hand delivery to the other party's address given below as follows:

If to Business Associate:

**Education Health Services, LLC  
214 Washington St  
Claremont, NH 03743  
Attn: James Keady, Privacy Officer**

**If to SAU ??:**

**CONTACT PERSON**

**Director of Student Services**

10. Interpretation. Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy and Security Rule. A reference in this Agreement to any section of the Privacy and Security Rule means the section in effect or as amended.

11. Entire Agreement. The Agreement constitutes the entire understanding among the parties with respect to its subject matter. If the terms of this Agreement are inconsistent with the terms of any present or future underlying service or sale agreement among the parties, the terms of this Agreement shall control.

12. Choice of Law. This Agreement shall be governed by the laws of the State of New Hampshire.

13. Consent to Jurisdiction. The parties expressly consent to the personal jurisdiction of the United States District Court for the District of New Hampshire and to the jurisdiction of the New Hampshire Superior Court for Sullivan County and to the jurisdiction of the New Hampshire Supreme Court.

IN WITNESS WHEREOF, the parties hereto hereby set their hands and seals as of the.

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|--------------------|--------------------------------|
| Business Associate | Education Health Services, LLC |
| By:                | By:                            |
| Name:              | Name: James Keady              |
| Title:             | Title: Privacy Officer         |