

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (this "Agreement") is entered into on this ____ day of _____, _____ (the "Effective Date"), between Grafton School, Incorporated (the "Covered Entity") and _____ (the "Business Associate").

WITNESSETH:

WHEREAS, the Covered Entity and the Business Associate are parties to a prior agreement (the "Primary Agreement") whereby Business Associate provides certain items and/or services (the "Designated Functions"); and

WHEREAS, the Parties desire to enter into this Agreement to comply with the Standards for Privacy of Individually Identifiable Health Information ("Privacy Standards") and the Security Standards promulgated by the Secretary of the U.S. Department of Health and Human Services ("HHS") under the Administrative Simplification Provisions of the Health Insurance Portability and Accountability Act of 1996, as amended by Subtitle D of the Health Information Technology for Economic and Clinical Health Act (the "HITECH Act"), pursuant to Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (collectively "HIPAA").

NOW, THEREFORE, the parties hereby agree as follows:

1. DEFINITIONS:

1.1 *Data Aggregation, and Protected Health Information* shall each have the meanings as set forth in 45 C.F.R. § 164.501, as amended from time to time.

1.2 *Privacy Officer* shall mean the Privacy Officer as defined and set forth under 45 C.F.R. § 164.530(a)(1), as amended from time to time.

1.3 *Administrative Safeguards, Physical Safeguards, Security Incident, and Technical Safeguards* shall each have the meanings as set forth in 45 C.F.R. § 164.304, as amended from time to time.

1.4 *Reportable Compromise* means the acquisition, access, use, or disclosure of Unsecured Protected Health Information by Business Associate, its agents, subcontractors or employees in a manner not permitted under this Agreement which compromises the security or privacy of Unsecured Protected Health Information. For purposes of this Agreement, a "Reportable Compromise" does not include (i) any unintentional acquisition, access, or use of Protected Health Information by Business Associate, if such acquisition, access, or use was made in good faith and within the scope of authority, provided there is no further inappropriate use or disclosure; (ii) any inadvertent disclosure by a person who is authorized to access Protected Health Information at Covered Entity or Business Associate to another person authorized to access Protected Health Information at Covered Entity or Business Associate, provided there is no further inappropriate use or disclosure. Any circumstances in which an individual has

intentionally acquired, accessed or disclosed Unsecured Protected Health Information in a manner that violates this Agreement is a Reportable Compromise.

1.5 *Unsecured Protected Health Information* shall have the meaning as set forth in 45 C.F.R. § 164.402, as amended from time to time.

1.6 Terms not otherwise defined herein shall have the meanings set forth under HIPAA.

2. PROTECTED HEALTH INFORMATION

2.1 Permitted Uses and Disclosures of Protected Health Information. Business Associate may (i) use and disclose Protected Health Information as necessary to perform the Designated Functions under the Primary Agreement, subject to the restrictions below, (ii) use and disclose Protected Health Information as required by law and as specifically permitted herein, (iii) use Protected Health Information for the Business Associate's proper management and administrative services, subject to the terms of this Agreement and the policies and procedures of the Covered Entity, and (iv) use Protected Health Information to provide Data Aggregation services as requested by Covered Entity for its health care operations, to the extent such Data Aggregation services are provided for under the Primary Agreement. In addition, 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. not to use or disclose Protected Health Information in any manner which would constitute a violation of the Privacy Standards if such use or disclosure had been undertaken by Covered Entity;
- c. immediately report (and in no event more than ten days after discovery) to the designated Privacy Officer of the Covered Entity, in writing, any Security Incident and/or any use and/or disclosure of the Protected Health Information that is not permitted or required by this Agreement of which Business Associate becomes aware, and provide notice to Covered Entity in accordance with Section 4.4;
- d. use all appropriate safeguards to maintain the security of and prevent use or disclosure of the Protected Health Information, except use or disclosure specifically permitted pursuant to this Agreement, and comply with Subpart C of 45 C.F.R. Part 164 with respect to electronic Protected Health Information;
- e. ensure that any subcontractors, agents or employees of Business Associate, including any permitted subcontractors, to whom Business Associate (by or through its subcontractors, agents or employees) provides the Protected Health Information received from, or created or received by the Business Associate on behalf of the Covered Entity, agree to the same restrictions and conditions that apply to Business Associate with respect to such information;

- f. make available to Covered Entity Protected Health Information as requested by Covered Entity to satisfy Covered Entity's obligations pursuant to 45 C.F.R. § 164.524, or any similar provision, as amended and in effect from time to time;
- g. make any amendments to Protected Health Information as directed or agreed to by Covered Entity in accordance with 45 C.F.R. § 164.526, or any similar provision, as amended and in effect from time to time, or take other measures as directed by Covered Entity to allow Covered Entity to satisfy obligations under 45 C.F.R. § 164.526;
- h. maintain and make available the information required to provide an accounting to the Covered Entity of any disclosures in accordance with 45 C.F.R. § 164.528, or any similar provision, as amended and in effect from time to time;
- i. to the extent that Business Associate is to carry out one or more of the Covered Entity's obligations under Subpart E of 45 C.F.R. Part 164, comply with the requirements that apply to the Covered Entity in the performance of such obligations;
- j. make available its internal practices, books and records relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate, its agents and employees on behalf of the Covered Entity to the Secretary of the United States Department of Health and Human Services ("HHS") for determining compliance with applicable regulations;
- k. comply with all further legal requirements affecting use, maintenance, storage and/or disclosure of the Protected Health Information, including, without limitation, any applicable requirements of 45 C.F.R. § 164.504, et seq. establishing procedures for mitigating, to the greatest extent possible, any deleterious effects from any improper use and/or disclosure of Protected Health Information;
- l. disclose to its subcontractors, agents or other third parties, and request from the Covered Entity, only the minimum Protected Health Information necessary to perform or fulfill a specific function required or permitted hereunder.

Business Associate shall notify all subcontractors, agents and employees of their obligations pursuant to this Section and section 2.2, and upon request of the Covered Entity, shall provide to Covered Entity a written agreement from such subcontractors, agents and employees acknowledging their obligations. To the extent that this Agreement provides for Business Associate to make information and/or materials available, Business Associate agrees that such information and/or materials shall be made available as soon as possible following a request by Covered Entity, but in no event later than forty-eight (48) hours after such a request. The parties acknowledge and agree that Covered Entity is not delegating to Business Associate any authority regarding the determination and processing of individual requests under 45 C.F.R. § 164.524, § 164.526 and/or § 164.528, and in the event that Business Associate receives any such requests from an individual, Business Associate will notify Covered Entity promptly of the

request and will cooperate with Covered Entity in processing such request as determined by Covered Entity.

2.2 Security Standards. Business Associate agrees to implement Administrative Safeguards, Physical Safeguards and Technical Safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the Protected Health Information that Business Associate creates, receives, maintains, or transmits on behalf of the Covered Entity as required by 45 C.F.R. Part 164. Further, to the extent that Business Associate requires access to Covered Entity's facilities or systems, Business Associate will comply with Covered Entity's policies, procedures and requirements applicable to such access.

2.3 Treatment of Protected Health Information following Termination. Upon termination of this Agreement, Business Associate shall (i) upon request of Covered Entity, destroy such portion of or all Protected Health Information received from, or created or received by Business Associate as requested by Covered Entity, and (ii) return all remaining Protected Health Information received from, or created or received by Business Associate in any form and retain no copies of such information. Notwithstanding the foregoing, in the event that Covered Entity determines that the return or destruction of all or a portion of the Protected Health Information is not feasible, Business Associate shall (1) Retain only that Protected Health Information which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities, (2) return to Covered Entity or destroy, as directed by Covered Entity, the remaining Protected Health Information that the Business Associate still maintains in any form, (3) 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, other than as provided for in this Section, for as long as Business associate retains the Protected Health Information, (4) 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, protections, limitations and restrictions as set forth above which applied prior to termination and (5) return to Covered Entity or destroy, as directed by Covered Entity, 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. Business Associate acknowledges and agrees that all Protected Health Information is and remains the property of Covered Entity and neither Business Associate nor any agent, employee or subcontractor of Business Associate shall have any property rights in any Protected Health Information, nor in any de-identified information derived therefrom, unless expressly agreed in writing by Covered Entity.

2.4 Electronic Transactions. To the extent that, on behalf of Covered Entity, Business Associate engages in any of the electronic transactions listed in the Administrative Simplification Provisions of HIPAA at 42 U.S.C. § 1320d-2(a)(2), or utilizes a third-party to engage in such transactions on behalf of Covered Entity, Business Associate warrants that it and any third-party acting on its behalf will fully comply with the requirements of the Standards for Electronic Transactions promulgated by HHS, as set forth in 45 C.F.R. Part 162. Failure of

Business Associate to comply with the Standards for Electronic Transactions, or to ensure that any third-parties engaged in any of the electronic transactions listed in the Administrative Simplification Provisions of HIPAA at 42 U.S.C. § 1320d-2(a)(2) on behalf of Business Associate and/or Covered Entity shall be considered a material breach of this Agreement and shall be grounds for immediate termination of the Primary Agreement.

2.5 HITECH Act. The parties agree that the requirements of the HITECH Act that relate to security and/or privacy and that are made applicable with respect to Covered Entity shall also be applicable to Business Associate and shall be deemed incorporated into this Agreement. In the event Business Associate discovers any Reportable Compromise, Business Associate shall immediately notify Covered Entity and will comply with all directions of Covered Entity relating to reporting of such events. Business Associate shall provide Covered Entity with all information available to Business Associate relating to the Reportable Compromise in order to allow Covered Entity to assess potential notifications under the HITECH Act and related regulations and to facilitate provision of such notifications where Covered Entity determines that such notifications are appropriate or required. In the event that Covered Entity determines that notification of the Reportable Compromise must be given to individuals or government authorities, as elected by Covered Entity, Business Associate will either provide such notifications on behalf of Covered Entity (the form of such notifications to be subject to the prior written approval of Covered Entity) or reimburse Covered Entity on demand for any and all costs and expenses incurred by Covered Entity in connection with preparing such notifications. Notwithstanding any provision in this Agreement to the contrary, Business Associate will not provide any notice to third parties (including, without limitation, patients or governmental authorities) of any Reportable Compromise in connection with this Agreement unless the form of such notice has been approved in writing by Covered Entity, provided, however, this provision shall not be interpreted to prohibit Business Associate from notifying its legal counsel or its insurers of any Reportable Compromise, and this provision shall not be interpreted to prohibit Business Associate from providing any notifications which Business Associate is expressly required by law to provide.

3. TERM AND TERMINATION

3.1 Term. This Agreement shall become effective on the Effective Date and shall continue in effect until all obligations of the Parties have been met, unless terminated as provided in this Section 3. In addition, certain provisions and requirements of this Agreement shall survive its expiration or other termination in accordance with Section 4.5 herein. Termination of this Agreement shall automatically terminate the Primary Agreement unless otherwise agreed in writing by Covered Entity at the time of termination of this Agreement. Subject to Section 4.5, this Agreement will automatically terminate without any further action of the Parties upon the termination or expiration of the Primary Agreement.

3.2 Termination by the Covered Entity. In the event that the Covered Entity determines that the Business Associate has breached a term of this Agreement, the Covered Entity may (i) require the Business Associate to use its best efforts to cure such breach to the satisfaction of Covered Entity as soon as possible, (ii) attempt to cure the breach through such means as determined by Covered Entity, with all expenses associated with efforts to be reimbursed by

Business Associate within five (5) days of a request for payment by Covered Entity, and/or (ii) terminate this Agreement at any time upon notice to Business Associate, without providing further opportunity to Business Associate to cure such breach and/or to continue efforts to cure. In the event Covered Entity undertakes any efforts to cure a breach by Business Associate, Business Associate shall cooperate with such efforts. In the event of the termination, Business Associate agrees to use its best efforts to assist Covered Entity to achieve an orderly transfer of the Designated Functions.

4. MISCELLANEOUS

4.1 Covered Entity. For purposes of this Agreement, the term Covered Entity shall include all entities covered by any joint notice of information practices (or privacy notice) of Grafton School, Incorporated. Notwithstanding the foregoing, Business Associate acknowledges and agrees that nothing herein shall be interpreted to subject any Covered Entity to liability in connection with the Primary Agreement other than such Covered Entity which is listed as a party to the Primary Agreement.

4.2 Indemnity. Business Associate agrees to indemnify and hold harmless Covered Entity, its affiliates, employees, agents, trustees and directors from and against any and all claims, losses, damages, suits, costs (including reasonable attorney fees and costs), arising out of or relating to any act or omission of Business Associate, its employees, and agents, or any failure by Business Associate to perform any covenant or obligation under this Agreement. If the Covered Entity is named as a party to any action or suit covered by this provision, Covered Entity shall have the option of either providing its own defense for which Business Associate shall pay the Covered Entity its costs and expenses within five (5) days of a request by Covered Entity, or Covered Entity may tender the defense whereupon Business Associate shall assume responsibility therefore. In the event that Covered Entity assumes responsibility for defense of a claim or suit, Business Associate shall cooperate with Covered Entity in defense of such matter. In addition, in the event that Business Associate receives any subpoena or other request for disclosure of Protected Health Information, Business Associate shall immediately notify Covered Entity. Business Associate shall, prior to disclosure, provide Covered Entity a reasonable opportunity to seek a protective order with respect to any such request or subpoena and Business Associate shall furnish only that portion of the Protected Health Information that its counsel advises is required to be disclosed by law.

4.3 Limitation of Liability. Covered Entity shall not be liable to Business Associate for any incidental, consequential, special, or punitive damages of any kind or nature, whether such liability is asserted on the basis of contract, tort (including, without limitation, negligence or strict liability) or otherwise, even if the other party has been advised of the possibility of such loss or damages. The parties acknowledge and agree that Covered Entity's liability to Business Associate in connection with any claim by a third party, including, without limitation, any liability of Covered Entity for contribution, shall be limited to the amount of liability to which Covered Entity would be subject in a direct action by such third party under Virginia law with consideration given to all mitigating factors, including, but not limited to, charitable immunity and the liability limit established for health care providers (as the term is defined in Section

8.01-581.1 of the Code of Virginia, 1950, as amended) under the Virginia Medical Malpractice Act.

4.4 Notices. Any notices to be given hereunder to a party shall be in writing and shall be deemed given if delivered personally, forwarded via U.S. Mail (certified with return receipt requested) or by recognized national overnight courier express carrier, and if to Covered Entity, shall be forwarded to the following address, or such other address of which Covered Entity may give notice:

If to a Covered Entity, to: Grafton School, Incorporated
 120 Bellview Avenue
 Winchester, Virginia 22602
 Attention: Privacy Officer

Notices to the Business Associate shall be deemed given if forwarded as described above to the last known business address of Business Associate as shown on Covered Entity's records.

4.5 Survival. The respective rights and obligations of Business Associate and Covered Entity under the provisions of Section 2, 3.2, 4.2, and 4.3 shall survive termination of this Agreement indefinitely.

4.6 General Provisions. This Agreement and the Primary Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia, notwithstanding Virginia's conflict of law doctrine. Pursuant to 45 C.F.R. § 160.203, certain provisions of state law relating to privacy of PHI may not be preempted by, and may supersede, HIPAA. With respect to such provisions of state law not preempted by the HIPAA, Business Associate shall maintain full and complete compliance with all such state privacy requirements. Nothing expressed or limited in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the Covered Entity, Business Associate and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever. This Agreement may not be modified, nor shall any provision hereof be waived or amended, except in a writing duly signed by authorized representatives of the parties. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original. Signatures to this Agreement transmitted by fax, by electronic mail in "portable document format" (".pdf") or jpeg format, or by any other electronic means intended to preserve the original graphic and pictorial appearance, shall have the same effect as physical delivery of the paper document bearing the original signature. A telecopy, facsimile, scanned copy (pdf or jpeg) or other similar reproduction of a signature of this Agreement shall have the same effect as an original for all purposes. A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of any right or remedy as to subsequent events. Notwithstanding any provision herein to the contrary, Business Associate shall comply with all laws, regulations and requirements applicable to business associates (as such term is defined pursuant to 45 C.F.R. Section 160.103) and all terms, conditions and obligations of business associates (as such term is defined pursuant to 45 C.F.R. Section 160.103) now or hereafter imposed by law or regulation shall be deemed to have been incorporated into this Agreement as though set forth in full

herein. In the event of any change of law, regulation or legal interpretation, upon request of Covered Entity, Business Associate agrees to execute amendments to this Agreement as requested by Covered Entity to reflect compliance with such laws, regulations or legal interpretation. In the event of any conflict or inconsistency between this Agreement and the terms of the Primary Agreement, the terms of this Agreement shall govern. The Parties acknowledge and agree that the violation of Section 2 of this Agreement by Business Associate would cause irreparable harm to Covered Entity and that Covered Entity's damages would be difficult to ascertain. Accordingly, in addition to any other remedies available, Covered Entity shall be entitled to injunctive relief and/or specific performance to enforce the provisions of Section 2.

WITNESS the following signatures effective as of the date first set forth above.

COVERED ENTITY:
Grafton School, Incorporated

By: _____

Its: _____

BUSINESS ASSOCIATE:

By: _____

Its: _____