

HIPAA BUSINESS ASSOCIATE AGREEMENT

THIS AGREEMENT is made effective the _____ day of _____, 2008, ("Effective Date") by and between Warren County School District ("Business Associate") and Dr. Robert G. Gabreski ("Covered Party"). The purpose of this Agreement is to satisfy certain obligations of Covered Party under the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations (45 CFR Parts 160-164) ("HIPAA") to ensure the integrity and confidentiality of Protected Health Information.

In consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and with the intention to be legally bound Business Associate and Covered Party agree as follows:

1. **Definitions.** Capitalized terms used, but not otherwise defined, in this Agreement shall have the meanings given them in HIPAA. For convenience of reference, the definitions of "Individually Identifiable Health Information" and "Protected Health Information" as of the Effective Date are as follows:

- 1.1 "Individually Identifiable Health Information" means information that is a subset of health information, including demographic information collected from an individual, and (i) is created or received by a healthcare provider, health plan, employer, or health care clearinghouse; and (ii) relates to the past, present, or future physical or mental health or condition of an individual; and (a) that identifies the individual, or (b) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

- 1.2 "Protected Health Information" means Individually Identifiable Health Information that Business Associate receives from Covered Party or from another business associate of Covered Party or which Business Associate creates for Covered Party which is transmitted or maintained in any form or medium. "Protected Health Information" shall not include education records covered by the Family Educational Right and Privacy Act, as amended, 20 U.S.C. § 1232g (a)(4)(B)(iv), or employment records held by Covered Party in its role as employer.

2. **Applicability of Terms; Conflicts.** This agreement applies to all past, present, and future contracts and relationships between Business Associate and Covered Party, written or unwritten, formal or informal, in which Covered Party provides any Protected Health Information to Business Associate in any form whatsoever. As of

the Effective Date, this Agreement automatically amends all existing agreements between Business Associate and Covered Party involving the use or disclosure of Protected Health Information. This Agreement shall automatically be incorporated in all subsequent agreements between Business Associate and Covered Party involving the use or disclosure of Protected Health Information whether or not specifically referenced therein. In the event of any conflict or inconsistency between a provision of this Agreement and a provision of any other agreement between Business Associate and Covered Party, the provision of this Agreement shall control unless: (i) Covered Party specifically agrees to the contrary in writing, or (ii) the provision in such other agreement establishes additional rights for Covered Party or additional duties for or restrictions on Business Associate with respect to Protected Health Information, in which case the provision of such other agreement will control.

3. Obligations and Activities of Business Associate.

- 3.1 Non-disclosure:** Business Associate will not use or disclose Protected Health Information other than as permitted or required by this Addendum or as Required By Law or as otherwise authorized by Covered Party.
- 3.2 Safeguards:** Business Associate will use appropriate safeguards to prevent use of disclosure of the Protected Health Information other than as provided for by this Addendum. Business Associate will develop, implement, maintain and use appropriate administrative, technical and physical safeguards to preserve the integrity and confidentiality of and to prevent non-permitted or violating use or disclosure of Protected Health Information which is transmitted electronically. Business Associate will document and keep these safeguards current.
- 3.3 Mitigation:** Business Associate will 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 Addendum.
- 3.4 Reporting:** Business Associate will report to the Privacy Officer of Covered Party, in writing, any use and/or disclosure of Protected Health Information that is not permitted or required by this Addendum of which Business Associate becomes aware. Such report shall be made as soon as reasonably possible but in no event more than five (5) business days after discovery by Business Associate of such unauthorized use or disclosure. This reporting obligation shall include breaches by Business Associate, its employees, subcontractors and/or agents. Each such report of a breach will: (i) identify the nature of the non-permitted or violating use or disclosure; (ii) identify the Protected Health Information used or disclosed; (iii) identify

who made the non-permitted use or violating disclosure; (iv) identify who received the non-permitted or violating use or disclosure; (v) identify what corrective action Business Associate took or will take to prevent further non-permitted or violating uses or disclosures; (vi) identify what Business Associate did or will do to mitigate any deleterious effect of the non-permitted or violating use or disclosure; and (vii) provide such other information as Covered Party may reasonable request.

- 3.5 Agents and Subcontractors:** Business Associate will ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of Covered Party, agrees to the same restrictions and conditions that apply through this Addendum to Business Associate with respect to such information.
- 3.6 Access:** Business Associate will provide access, within five (5) business days of receiving a written request from Covered Party, to Protected Health Information from a Designated Record Set of Covered Party, to Covered Party (or, as directed by Covered Party, to an Individual) in order to meet the requirements under 45 CFR §164.524. This provision does not apply if Business Associate and its employees, subcontractors and agents have no Protected Health Information from a Designated Record Set of Covered Party.
- 3.7 Amendments:** Business Associate will make, upon written request from Covered Party, any amendment(s) to Protected Health Information in a Designated Record Set of Covered Party that Covered Party directs or agrees to pursuant to 45 CFR § 164.526. This provision does not apply if Business Associate and its employees, subcontractors and agents have no Protected Health Information from a Designated Record Set of Covered Party.
- 3.8 Records:** Business Associate will make internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Party available to the Secretary during regular business hours within five (5) business days of receiving a written request from Covered Party, or sooner if required by the Secretary, for purposes of the Secretary determining Covered Party's compliance with HIPAA.
- 3.9 Accounting for Disclosures:** Business Associate will document such disclosures by Business Associate and its employees, subcontractors and agents of Protected Health Information and information related to such

disclosures as would be required for Covered Party to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528. Business Associate agrees to provide to Covered Party (or an Individual, at Covered Party's request), within five (5) business days of receiving a written request from Covered Party, information collected in accordance with the preceding sentence, to permit Covered Party to respond to a request by an Individual for such an accounting of disclosures.

4. Permitted Uses and Disclosures by Business Associate.

4.1 Functions and Activities on Covered Party's Behalf. Except as otherwise limited in this Agreement or any other agreement between Business Associate and Covered Party, Business Associate may use or disclose Protected Health Information on behalf of, or to provide services to Covered Party only for purposes authorized by Covered Party in a separate written agreement or through specific oral instruction, if such use or disclosure of Protected Health Information would not violate HIPAA if done by Covered Party itself.

4.2 Business Associate's Operations. Except as otherwise limited in this Agreement or any other agreement between Business Associate and Covered Party: (a) Business Associate may use Protected Health Information for Business Associate's proper management and administration or to carry out Business Associate's legal responsibilities; (b) Business Associate may disclose Protected Health Information for Business Associate's proper management and administration, provided that disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the Protected Health Information is disclosed that (i) it will remain confidential and will be used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and (ii) the person will notify Business Associate of any instances of which it is aware in which the confidentiality of the Protected Health Information has been breached.

5. Term and Termination.

5.1 Term. This agreement shall commence as of the Effective Date, and shall terminate when all of the Protected Health Information provided by Covered Party to Business Associate, or created or received by Business Associate on behalf of Covered Party, is destroyed or returned to Covered Party, or, if it is infeasible to return or destroy Protected Health Information, protections are

extended to such Protected Health Information in accordance with the provisions of this Section 5.

5.2 Termination for Cause. As provided in HIPAA, including 45 CFR § 164.504 (e)(2)(iii), upon Covered Party's reasonable determination that Business Associate has breached a material term of this Agreement, Covered Party shall be entitled to do any one or more of the following:

- (a) Give Business Associate written notice of the existence of such breach and give Business Associate an opportunity to cure upon mutually agreeable terms. If Business Associate does not cure the breach or end the violation according to such terms, or if Covered Party and Business Associate are unable to agree upon such terms, Covered Party may immediately terminate any agreement between Covered Party and Business Associate which is the subject of such breach.
- (b) Immediately terminate any agreement between Covered Party and Business Associate which is the subject of such breach.
- (c) Immediately stop all further disclosures of Protected Health Information to Business Associate pursuant to each agreement between Covered Party and Business Associate which is the subject of such breach.

5.3 Effect of Termination. Upon receipt of written demand from Covered Party, Business Associate agrees to immediately return or destroy, except to the extent infeasible, all Protected Health Information demanded by Covered Party, including all such Protected Health Information which Business Associate has disclosed to its employees, subcontractors and/or agents. Destruction shall include destruction of all copies including backup tapes and other electronic backup medium. In the event the return or destruction of some or all such Protected Health Information is infeasible, Protected Health Information not returned or destroyed pursuant to this paragraph shall be used or disclosed only for those purposes that make return or destruction infeasible.

5.4 Continuing Privacy Obligation. Business Associate's obligation to protect the privacy of Protected Health Information is continuous and survives any termination, cancellation, expiration, or other conclusion of this Agreement or any other agreement between Business Associate and Covered Party.

5.5 Indemnification. Business Associate agrees to execute from time to time such amendments to this Agreement and additional instruments as may reasonably be requested by Covered Party to fulfill or satisfy Covered

Party's present or future obligations arising out of HIPAA. Business Associate agrees to indemnify and hold harmless Covered Party from any and all liability or claims for damages or injury caused or resulting from negligent, intentional or fraudulent acts or omissions in connection with Business Associate's use or disclosure of Protected Health Information or from Business Associate's breach of this Agreement. Business Associate shall further indemnify and hold Covered Party harmless against all costs, reasonable counsel fees, expenses and liabilities incurred in connection with any action or proceeding brought against Covered Party by reason of any such claims. Business Associate, upon notice from Covered Party, shall resist and defend at Business Associate's expense, such action or proceeding.

5.6 Governing Law. This Agreement shall be governed by and construed in accordance with the substantive laws of the Commonwealth of Pennsylvania without regard to conflicts of laws principles.

- 6. Notices.** All notices pursuant to this Agreement must be given in writing and shall be effective when received if hand-delivered or upon dispatch if sent by reputable overnight delivery service, facsimile or U.S. Mail to the appropriate address or facsimile number as set forth at the end of this Agreement.
- 7. Miscellaneous.** Business Associate and Covered Party agree that Individuals who are the subject of Protected Health Information are not third-party beneficiaries of this Agreement. In the event that any provision of this Agreement violates any applicable statute, ordinance or rule of law in any jurisdiction that governs this Agreement, such provision shall be ineffective to the extent of such violation without invalidating any other provision of this Agreement. This Agreement may not be amended, altered or modified except by written agreement signed by Business Associate and Covered Party. No provision of this Agreement may be waived except by an agreement in writing signed by the waiving party. A waiver of any term or provision shall not be construed as a waiver of any other term or provision. Nothing in Section 3 of this Agreement shall be deemed a waiver of any legally-recognized claim of privilege available to Business Associate. The persons signing below have the right and authority to execute this Agreement for their respective entities and no further approvals are necessary to create a binding Agreement. This Agreement shall be binding upon and for the benefit of the parties, their successors and assigns; provided that neither party may assign their rights or obligations under this Agreement without the prior written consent of the other party, except that Covered Party may assign this

Agreement to an affiliate or successor of Covered Party without the consent of Business Associate. The paragraph headings in this Agreement are for convenience only. They form no part of this Agreement and shall not affect its interpretation.

BUSINESS ASSOCIATE:

Business Associate Address for notices:

Representative: _____

Title: _____

Phone: _____ Fax: _____

COVERED PARTY:

Covered Party Address for notices:

Dr. Robert G. Gabreski

410 Quaker Hill Road
Warren, PA 16365
814-723-4511