

BUSINESS ASSOCIATE AGREEMENT

WHEREAS, pursuant to the Health Insurance Portability and Accountability Act of 1996, Pub. L. 104-191, 110 Stat. 2024 (Aug. 21, 1996) ("HIPAA"), the Office of the Secretary of the Department of Health and Human Services has issued: (1) regulations providing Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Subparts A and E of Part 164 ("Privacy Rule"); (2) regulations providing Security Standards for the Protection of Electronic Protected Health Information at 45 CFR Part 160 and Subpart C of Part 164 (the "Security Rule"); and (3) regulations modifying the Privacy Rule, Security Rule, Enforcement and Breach Notification Rules; and

WHEREAS, the privacy and security provisions of HIPAA have been amended by the Health Information Technology for Economic and Clinical Health Act (HITECH) provisions of the American Recovery and Reinvestment Act of 2009, and any and all references in this Agreement to the "HIPAA Rules" shall be deemed to include the Privacy Rule, the Security Rule, HITECH, the Enforcement and Breach Notification Rules, and all existing and future implementing regulations, as they become effective; and

WHEREAS, the HIPAA Rules provide, among other things, that a Covered Entity is permitted to disclose Protected Health Information to a Business Associate and allow the Business Associate to obtain, receive, and create Protected Health Information on the Covered Entity's behalf, only if the Covered Entity obtains satisfactory assurances in the form of a written contract, that the Business Associate will appropriately safeguard the Protected Health Information; and

WHEREAS, Suwannee County School Board (the "Plan Sponsor") maintains one or more Health Plans ("Plans") and has entered into an Agreement with Explain My Benefits ("Business Associate") for Web Site Employee Benefits Information Services (the "Service Agreement"), with this Agreement being an Addendum to the Service Agreement; and

WHEREAS, under the terms of the Service Agreement, Business Associate may receive Protected Health Information in the performance of services on behalf of such Plans, and the Plan Sponsor and Business Associate desire to determine the terms under which they shall comply with the HIPAA Rules;

NOW THEREFORE, the Plan Sponsor (acting on behalf of the Plans) and Business Associate agree as follows:

1. GENERAL HIPAA COMPLIANCE PROVISIONS

1.1. **HIPAA Definitions.** Except as otherwise provided in this Agreement, all capitalized terms contained in this Agreement shall have the meanings set forth in the HIPAA Rules.

1.2. **HIPAA Readiness.** Business Associate agrees that it will be fully compliant with the requirements of the HIPAA Rules that apply to Business Associates by the compliance dates established under such rules to the extent necessary to enable the Plans to comply with their obligations under the HIPAA Rules.

1.3. **Changes in Law.** Business Associate agrees that it will comply with any changes in HIPAA Rules by the compliance date established for any such changes. If, due to such a change, either or all of the parties are no longer required to treat Protected Health Information in the manner provided for in this Agreement, the parties shall renegotiate this Agreement, subject to the requirements of Section 5. Any such renegotiation shall occur as soon as practicable following the occurrence of the change.

1.4. **Nature of Relationship.** The parties acknowledge that:

1.4.1. Each Plan is a Group Health Plan and a Covered Entity;

1.4.2. The Plans, if more than one, may be collectively part of an Organized Health Care Arrangement ("OHCA");

1.4.3. Business Associate is a Business Associate of one of more of the Plans;
and

1.4.4. Plan Sponsor is the plan sponsor (as defined in section 3(16)(b) of Employee Retirement Income Security Act of 1974 29 USC § 1001 *et seq.*, as amended ("ERISA")) of each Plan, is not a Covered Entity, and acts in the capacity of a plan sponsor as defined in the HIPAA Rules.

1.4.5. Whenever reference is made in this Agreement to actions or undertakings of a Plan, to reports or information provided by the Business Associate to a Plan, or to instructions to the Business Associate from a Plan, the reference to the Plan shall be to the person or entity designated in such Plan's documents as having responsibility for Plan administration or, if no designation is made therein, the Plan Sponsor.

2. OBLIGATIONS OF BUSINESS ASSOCIATE

2.1. Permitted Uses and Disclosures of Protected Health Information.

2.1.1. **Uses and Disclosures on Behalf of the Plan.** The Business Associate shall be permitted to use and disclose Protected Health Information for services Business Associate is providing to pursuant to the Service Agreement, which may include but not be limited to Treatment, Payment activities and/or Health Care Operations, and as otherwise required to perform its obligations under this Agreement and the Service Agreement.

2.1.2. **Other Permitted Uses and Disclosures.** In addition to the uses and disclosures set forth in Section 2.1.1, Business Associate may use or disclose Protected Health Information received from, or created or received on behalf of, the Plan under the following circumstances:

2.1.2.1. **Disclosures to the Plan Sponsor.** Business Associate may provide:

i. Summary Health Information to the Plan Sponsor upon Plan Sponsor's written request which specifies that the purpose of the request is either: (a) to obtain premium bids for providing health insurance coverage to a Plan; and/or (b) to modify, amend or terminate a Plan;

ii. Information to the Plan Sponsor on whether an individual is participating in a Plan or is enrolled or has disenrolled from any insurance coverage offered by the Plan; and

iii. Protected Health Information to the Plan Sponsor for purposes of Plan Administration Functions, provided that the Plan Sponsor has provided to Business Associate: (a) a copy of Plan Sponsor's certification to the applicable Plan under 45 CFR 164.504(f)(2) relating to the required amendment of such Plan's plan documents (the "Certification"), and (b) a list of employees of or descriptions of positions with Plan Sponsor who are authorized in accordance with the applicable plan documents to receive Protected Health Information from the Business Associate in connection with Plan Administration Functions of such Plan.

2.1.2.2. Use of Protected Health Information for Management, Administration, and Legal Responsibilities. Business Associate is permitted to use Protected Health Information if necessary for the proper management and administration of Business Associate or to carry out its legal responsibilities.

2.1.2.3. Disclosure of Protected Health Information For Management, Administration, and Legal Responsibilities. Business Associate is permitted to disclose Protected Health Information if necessary for the proper management and administration of Business Associate, or to carry out its legal responsibilities, provided that the disclosure is required by law, or Business Associate obtains reasonable assurances from the person to whom the Protected Health Information is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, the person will use appropriate safeguards to prevent use or disclosure of the information, and the person will notify Business Associate immediately of any instance of which it is aware in which the confidentiality of the Protected Health Information has been breached.

2.1.2.4. Data Aggregation Services. Business Associate is also permitted to use or disclose Protected Health Information to provide data aggregation services, as that term is defined by 45 CFR 164.501, relating to the health care operations of a Plan.

2.1.2.5. Commercial Purposes. Business Associate is only permitted to receive direct or indirect remuneration for any exchange of PHI not otherwise authorized under HITECH without individual authorization, if (i) specifically required for the provision of services under the underlying Service Agreement; (ii) for treatment purposes; (iii) providing the individual with a copy of his Protected Health Information; or (iv) otherwise determined by the Secretary in regulations.

2.1.3. Further Uses Prohibited. Except as provided in Sections 2.1.1 and Section 2.1.2, Business Associate is prohibited from further using or disclosing any information received from the Plan, or from any other Business Associate of the Plan, for any commercial purposes of Business Associate, including, for example, "data mining." Business Associate shall not engage in any sale (as defined in HIPAA Rules) of Protected Health Information. Business Associate shall not use or disclose Genetic Information for underwriting purposes in violation of the HIPAA Rules.

2.2. Minimum Necessary. Business Associate shall only request, use, and disclose the minimum amount of Protected Health Information necessary to accomplish the purposes of the request, use, or disclosure. Business Associate and Plan Sponsor acknowledge that the phrase "minimum necessary" shall be interpreted in accordance with HITECH and the HIPAA Rules.

2.3. Prohibited, Unlawful, or Unauthorized Use and Disclosure of Protected Health Information. Business Associate shall not use or further disclose any Protected Health Information received from, or created or received on behalf of, the OHCA or a Plan, in a manner that would violate the requirements of the Privacy Rule if done by the OHCA or such Plan.

2.4. Required Privacy Safeguards. Business Associate will develop, implement, maintain, and use appropriate safeguards to prevent use or disclosure of Protected Health Information received from, or created or received on behalf of, the OHCA or a Plan or other than as provided for in this Agreement or as required by law, including adopting policies and procedures regarding the safeguarding of Protected Health Information; and providing training to relevant employees, independent contractors, and subcontractors on such policies and procedures to prevent the improper use or disclosure of Protected Health Information. To the extent Business Associate will carry out one or more of Plan Sponsor's obligations under the Privacy Rule, the Business Associate will comply with the requirements of the Privacy Rules that apply to the Plan Sponsor in the performance of such obligations.

2.5. Mitigation of Improper Uses or Disclosures. Business Associate shall 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.

2.6. Reporting of Unauthorized Uses and Disclosures. Business Associate shall promptly report in writing to the applicable Plan any use or disclosure of Protected Health Information not provided for under this Agreement, of which Business Associate becomes aware, but in no event later than fifteen (15) business days of first learning of any such use or disclosure. Business Associate agrees that if any of its employees, agents, subcontractors or representatives use or disclose Protected Health Information received from, or created or received on behalf of, a Plan, or any derivative De-identified Information in a manner not provided for in this Agreement, Business Associate shall ensure that such employees, agents, subcontractors and representatives shall receive training on Business Associate's procedures for compliance with the HIPAA Rules, or shall be sanctioned or prevented from accessing any Protected Health Information Business Associate receives from, or creates or receives on behalf of, a Plan. Continued use of Protected Health Information in a manner contrary to the terms of this Agreement shall constitute a material breach of this Agreement.

2.7. Security Rule.

2.7.1. Security Safeguards. Business Associate agrees to implement administrative, physical, and technical safeguards set forth in the Security Rule that reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic Protected Health Information that Business Associate creates, receives, maintains, or transmits on behalf of any Plan, the OHCA or Plan Sponsor.

2.7.2. Security Incidents. Business Associate agrees to report to the OHCA and Plan Sponsor any unauthorized access, use, disclosure, modification, or destruction of information or interference with information system operations which affect Electronic Protected Health Information created, received, maintained, or transmitted on behalf of the OHCA or any Plan of which Business Associate becomes aware. Business Associate agrees to also report to the OHCA and Plan Sponsor any attempted unauthorized access affecting Electronic Protected Health Information created, received, maintained, or transmitted on behalf of the OHCA or any Plan of

which Business Associate becomes aware; provided that Business Associate determines that the attempted access was material and credible.

2.8. **Breach Notifications.** Business Associate agrees to notify the applicable Plan and the Plan Sponsor of any Breach of Unsecured Protected Health Information within 10 days from the date of discovery.

2.8.1. **Information About Breach.** Business Associate shall provide a report to the Plan within twenty-five (25) days of discovery of a Breach except when despite all reasonable efforts by Business Associate to obtain the information required, circumstances beyond the control of Business Associate necessitate additional time. Under such circumstances Business Associate shall provide to the Plan the required information as soon as possible and without unreasonable delay, but in no event later than thirty-five (35) calendar days from the date of discovery of the Breach. A Breach will be treated as discovered in accordance with 45 CFR §164.410. The report shall include: (i) the date of the Breach; (ii) the date of discovery of the Breach; (iii) a list of each individual whose Unsecured Protected Health Information has been or is reasonably believed to have been used, accessed, acquired, or disclosed during the Breach; (iv) a description of the type of Unsecured Protected Health Information involved; (v) the identity of who made the non-permitted use or disclosure and who received the non-permitted disclosure (if known); and (vi) any other details necessary to complete an assessment of the risk of harm to the affected individual.

2.8.2. **Notification to Individual and Others.** Unless otherwise agreed between the Plan Sponsor and Business Associate, the Plan shall be responsible to provide notification to individuals whose Unsecured Protected Health Information has been disclosed, as well as the Secretary of Health and Human Services and the media, as required by 45 CFR 164 Subpart D.

2.8.3. **Investigation and New Procedures.** Business Associate agrees to investigate the Breach and to establish procedures to mitigate losses and protect against future Breaches, and to provide a description of these procedures and the specific findings of the investigation to Business Associate in the time and manner reasonably requested by the Plan.

2.9. **Plan Participant Requests.** The Plans, Plan Sponsor and Business Associate acknowledge that Plan participants have certain rights under the Privacy Rule to access, amend and receive an accounting of certain disclosures of their Protected Health Information. Business Associate further understands that the Plans have developed specific policies and procedures to be followed for Plan participants who make such requests as an exercise of their rights under the Privacy Rule. A request by a Plan participant or such participant's personal representative made in accordance with such policies and procedures to access, amend or receive an accounting of disclosures of the participant's Protected Health Information is referred to herein as a "Formal HIPAA Request."

2.9.1. **Access to Protected Health Information.** Within ten (10) days of a Plan's request on behalf of an individual, Business Associate agrees to make available to the Plan (or, at the direction of the Plan, the Plan participant) any relevant Protected Health Information in a Designated Record Set received from, or created or received on behalf of the Plan in accordance with the Privacy Rule. If Business Associate receives, directly or indirectly, a request from an individual requesting Protected Health Information, Business Associate shall notify the Plan in writing promptly of such request no later than 5 business days of receiving such request. If a Plan requests an electronic copy of Protected Health Information that is maintained electronically in a Designated Record Set in the Business Associate's custody or control, Business Associate will provide an electronic copy in the form and format specified by the Plan if it is readily producible in

such format; if it is not readily producible in such format, Business Associate will work with the Plan to determine an alternative form and format that enables the Plan to meet its electronic access obligations under 45 CFR §164.524.

2.9.2. Amendment of Protected Health Information. Within ten (10) days of a Plan's request, Business Associate agrees to make available to the Plan any relevant Protected Health Information in a Designated Record Set received from, or created or received on behalf of the Plan so the Plan may fulfill its obligations to amend such Protected Health Information pursuant to the Privacy Rule. At the direction of such Plan, Business Associate shall incorporate any amendments to Protected Health Information into any and all Protected Health Information Business Associate maintains. If Business Associate receives, directly or indirectly, a request from an individual for an amendment to Protected Health Information, Business Associate shall notify the Plan in writing promptly of such request no later than five (5) business days of receiving such request. Each Plan shall have full discretion to determine whether the requested amendment shall occur.

2.9.3. Accounting of Disclosures. Business Associate shall maintain, beginning as of the date Business Associate first receives Protected Health Information from a Plan or the Plan Sponsor, an accounting of those disclosures of Protected Health Information it receives from, or creates or receives on behalf of the Plans which are not excepted from disclosure accounting under the Privacy Rule. Within ten (10) days of a Plan's request, Business Associate shall make available to such Plan, or, at the direction of such Plan, the Plan participant, the information required to provide an accounting of disclosures in accordance with 45 CFR § 164.528. If Business Associate receives, directly or indirectly, a request from an individual requesting an accounting of disclosures of Protected Health Information, Business Associate shall notify the applicable Plan in writing promptly of such request no later than 5 business days of receiving such a request. Business Associate shall not provide such an accounting based on an individual's Formal HIPAA Request unless directed by such Plan. Each Plan shall have full discretion to determine whether the requested accounting shall be provided to the requesting individual. Business Associate will maintain the disclosure information for at least 6 years following the date of the accountable disclosure to which the disclosure information relates.

2.10. Restrictions and Confidential Communications. Business Associate shall, upon notice from a Plan in accordance with Section 3.3, accommodate any restriction to the use or disclosure of Protected Health Information and any request for confidential communications to which such Plan has agreed in accordance with the Privacy Rule.

2.11. Subcontractors. Business Associate will require each of its agents, including any subcontractor (if permitted under the applicable Service Agreement), to whom it provides Protected Health Information received from, or created or received on behalf of, a Plan to agree, in a written agreement with Business Associate, to comply with the Security Rule, and to agree to all of the same restrictions and conditions contained in this Agreement or the HIPAA Rules that apply to Business Associate with respect to such information.

2.12. Data Transmission. The parties agree that Business Associate shall, on behalf of the Plans, transmit data for transactions that are required to be conducted in standardized format under the HIPAA Rules.

2.12.1. Standardized Format. Business Associate shall comply with the HIPAA Rules for all transactions conducted on behalf of the Plans that are required to be in standardized format.

2.12.2. **Subcontractors.** Business Associate shall ensure that any of its subcontractors to whom it delegates any of its duties under its contract with a Plan, agrees to conduct and agrees to require its agents or subcontractors to comply with the HIPAA Rules for all transactions conducted on behalf of such Plan that are required to be in standardized format.

2.13. **Audit.**

2.13.1. **Audit by Secretary of Health and Human Services.** Business Associate shall make its internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received on behalf of, the Plans available to the Secretary of Health and Human Services upon request for purposes of determining compliance by the Plans with the HIPAA Rules.

2.13.2. **Audit by a Plan.** Business Associate shall make its internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received on behalf of, a Plan available to such Plan within fourteen (14) business days of such Plan's request for the purposes of monitoring Business Associate's compliance with this Agreement.

2.14. **Enforcement.** Business Associate acknowledges that it is subject to civil and criminal enforcement for failure to comply with the HIPAA Rules.

3. OBLIGATIONS OF COVERED ENTITY

3.1. **Notice of Privacy Practices.** The Plans shall provide Business Associate with the notice of privacy practices that the OHCA produces in accordance with 45 CFR 164.520, as well as any changes to such notice.

3.2. **Revocation of Permission.** Each Plan shall provide Business Associate with any changes in, or revocation of, permission by any individual to use or disclose Protected Health Information, if such changes affect Business Associate's permitted or required uses and disclosures with respect to such Plan.

3.3. **Notice of Restrictions and Confidential Communications.** Each Plan shall notify Business Associate of any restriction on the use or disclosure of Protected Health Information that such Plan has agreed to in accordance with 45 CFR § 164.522. The applicable Plan shall notify Business Associate of any restriction on the use or disclosure of Protected Health Information and any request for confidential communications to which, in accordance with the Privacy Rule, such Plan has agreed.

3.4. **Permissible Requests By the Plan.** Except as provided in Section 2.1, the Plans shall not request that Business Associate use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by the Covered Entity.

4. AMENDMENT AND TERMINATION

4.1. **Termination for Violation of Agreement.** Without limiting the rights of the parties under the Service Agreement, the Plan Sponsor will have the right to terminate this Agreement and the Service Agreement if Business Associate has engaged in an activity or practice that constitutes a material breach or violation of Business Associate's obligations regarding Protected Health Information under this Agreement and, on notice of such material breach or violation from such Plan

Sponsor, fails to take reasonable and diligent steps to cure the breach or end the violation. The Plan Sponsor will follow the notice of termination procedures (if any) applicable to the Service Agreement. Notwithstanding the termination of this Agreement, Business Associate shall continue to comply with Section 5.2 hereof after termination of this Agreement.

4.2. **Return of Protected Health Information.** At termination of this Agreement or the Service Agreement, whichever shall be first to occur, Business Associate shall return to the Plans all Protected Health Information received from, or created or received on behalf of, such Plans that Business Associate maintains in any form and shall retain no copies of such information. This provision shall also apply to Protected Health Information that is in the possession of any Subcontractor of Business Associate. Further, Business Associate shall require any such Subcontractor to certify to Business Associate that it has returned or destroyed all such information. If such return is not feasible, Business Associate shall notify the Plan Sponsor thereof and Business Associate shall destroy such Protected Health Information and/or extend the protections of this Agreement to such Protected Health Information retained by Business Associate and limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible.

5. MISCELLANEOUS PROVISIONS

5.1. **Third-Party Beneficiary.** No individual or entity is intended to be a third-party beneficiary to this Agreement.

5.2. **Severability.** If any provisions of this Agreement shall be held by a court of competent jurisdiction to be no longer required by the HIPAA Rules, the parties shall exercise their best efforts to determine whether such provision shall be retained, replaced, or modified.

5.3. **Procedures.** The parties shall comply with procedures mutually agreed upon by the parties to facilitate the Plans' compliance with the HIPAA Rules, including procedures for employee sanctions and procedures designed to mitigate the harmful effects of any improper use or disclosure of the Protected Health Information of any Plans.

5.4. **Choice of Law.** This Agreement shall be governed by, and construed in accordance with, the laws of the state of Florida, except to the extent federal law applies.

5.5. **Headings.** The headings and subheadings of the Agreement have been inserted for convenience of reference only and shall not affect the construction of the provisions of the Agreement.

5.6. **Cooperation.** The parties shall agree to cooperate and to comply with procedures mutually agreed upon to facilitate compliance by the Plans with the HIPAA Rules, including procedures designed to mitigate the harmful effects of any improper use or disclosure of the Plans' Protected Health Information.

5.7. **Notice.** All notices, requests, demands, approvals, and other communications required or permitted by this Agreement shall be in writing and sent by certified mail or by personal delivery. Such notice shall be deemed given on any date of delivery by the United States Postal Service. Any notice shall be sent to the following address (or such subsequent address provided by the applicable party):

5.7.1. If to Plan Sponsor:

Privacy Officer

Suwannee County School Board
1729 Walker Avenue, SW, Ste. 200
Live Oak, FL 32064
Attn: Ted L. Roush

5.7.2. If to Business Associate

Explain My Benefits LLC
2461 W. SR 426
STE 2021
Oviedo, FL 32765
Attn: David Howes

5.8. **Conflict.** In the event of any conflict between the provisions of the Service Agreement and this Agreement, the terms of this Agreement shall govern to the extent necessary to assure the Plans' compliance with the HIPAA Rules.

IN WITNESS WHEREOF, the undersigned, having full authority to bind their respective principals, have executed this Agreement as of this 27 day of MARCH, 2018.

Plan Sponsor:

By: 

Printed Name: Ted L. Roush
Title: Superintendent of Schools
Date: MAR 27 2018

"Approved as to Form and Sufficiency

BY 

Leonard J. Dietzen, III *for*

Rumberger, Kirk & Caldwell, P.A.

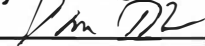
Suwannee School Board Attorney"

By: 

Printed Name: Jerry Taylor **MAR 27 2018**
Title: Board Chairman

Business Associate:

Explain My Benefits

By: 

Printed Name: David Howes
Title: President
Date: 4/6/18