Business Associate Agreement

This Business Associate Agreement ("Agreement") is being entered into between RE Sutton & Associates, a division of Brown & Brown of Indiana, Inc. ("Business Associate") and all of the Health Plans of Plan Sponsor ("Covered Entity") to facilitate compliance with the Privacy and Security Rules. It is also being entered into between the parties to facilitate compliance with the HITECH Amendment to HIPAA. In consideration for the compensation paid to Business Associate to provide services relating to and on behalf of Covered Entity, the parties agree to the terms set forth in this Agreement.

This Agreement is generally effective as of February 17, 2010, or when Business Associate initially becomes a Business Associate of Covered Entity and both parties sign this Agreement, if later. However, certain provisions have special effective dates, as set forth below, or in HIPAA or the HITECH Amendment.

Article 1

Definitions

The following terms have the meanings described in this Article for purposes of the Agreement unless the context clearly indicates another meaning. Terms used, but not otherwise defined, in this Agreement have the same meaning as those terms in the Privacy Rule.

1.1 Business Associate

"Business Associate" means the entity described in the first paragraph of this Agreement.

1.2 CFR


1.3 Covered Entity

"Covered Entity" means all of the Health Plans maintained by Plan Sponsor.

1.4 Designated Record Set

"Designated Record Set” has the same meaning as the term “Designated Record Set” in 45 CFR 164.501.

1.5 Electronic Health Record

"Electronic Health Record” means an electronic record of health-related information on an individual that is created, gathered, managed, and consulted by authorized health care clinicians and staff.
1.6 **HIPAA**

“HIPAA” means the Health Insurance Portability and Accountability Act of 1996.

1.7 **HITECH Amendment**

“HITECH Amendment” means the changes to HIPAA made by the Health Information Technology for Economic and Clinical Health Act.

1.8 **Individual**

“Individual” has the same meaning as the term “individual” in 45 CFR 160.103 and includes a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).

1.9 **Plan Sponsor**

“Plan Sponsor” means Monroe County Community School Corporation

1.10 **Privacy Rule**

“Privacy Rule” means the privacy rule of HIPAA as set forth in the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, subparts A and E.

1.11 **Protected Health Information**

“Protected Health Information” has the same meaning as the term “protected health information” in 45 CFR 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.

1.12 **Required By Law**

“Required By Law” has the same meaning as the term “required by law” in 45 CFR 164.103.

1.13 **Secretary**

“Secretary” means the Secretary of the Department of Health and Human Services or his designee.

1.14 **Security Incident**

“Security Incident” has the same meaning as the term “Security Incident” in 45 CFR 164.304.
1.15 **Security Rule**

“Security Rule” shall mean the security standards and implementation specifications at 45 CFR Part 160 and Part 164, subpart C.

**Article 2**

**Obligations and Activities of Business Associate**

Business Associate agrees to perform the obligations and activities described in this Article.

2.1 Business Associate understands that pursuant to the HITECH Amendment, it is subject to the HIPAA Privacy and Security Rules in a similar manner as the rules apply to Covered Entity. As a result, Business Associate agrees to take all actions necessary to comply with the HIPAA Privacy and Security Rules for business associates as revised by the HITECH Amendment, including, but not limited to, the following: Business Associate shall appoint a HIPAA privacy officer and a HIPAA security officer. Business Associate shall establish policies and procedures to ensure compliance with the Privacy and Security Rules, Business Associates shall train its workforce regarding the Privacy and Security Rules, Business Associate shall enter into a privacy/security agreement with Covered Entity, Business Associate shall enter into privacy/security agreements with its subcontractors that perform functions relating to Covered Entity involving PHI, and Business Associate shall conduct a security risk analysis.

2.2 Business Associate agrees to not use or disclose Protected Health Information other than as permitted or required by the Agreement or as Required By Law.

2.3 Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement. Business Associate shall implement administrative, physical and technical safeguards (including written policies and procedures) that reasonably and appropriately protect the confidentiality, integrity and availability of electronic PHI that it creates, receives, maintains or transmits on behalf of Covered Entity as required by the Security Rule.

2.4 Business Associate agrees to 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.

2.5 Business Associate agrees to report to Covered Entity any use or disclosure of the Protected Health Information not provided for by this Agreement of which it becomes aware and/or any Security Incident of which it becomes aware.

In addition, effective as of September 23, 2009 or the date this Agreement is signed, if later, Business Associates agrees to the following in connection with the breach notification requirements of the HITECH Amendment:

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(a) If Business Associate discovers a breach of unsecured PHI, as those terms are defined by 45 CFR 164.202, Business Associate shall notify Covered Entity without unreasonable delay and within 10 calendar days after discovery. For this purpose, discovery means the first day on which the breach is known to Business Associate or by exercising reasonable diligence would have been known to Business Associate. Business Associate shall be deemed to have knowledge of a breach if the breach is known or by exercising reasonable diligence would have been known to any person, other than the person committing the breach, who is an employee, officer, subcontractor or other agent of Business Associate. The notification must include identification of each individual whose unsecured PHI has been or it has reasonably believed to have been breached and any other available information in Business Associate’s possession which the Plan is required to include in the individual notice contemplated by 45 CFR 164.404.

(b) Notwithstanding the immediately preceding paragraph, Business Associate shall assume the individual notice obligation specified in 45 CFR 164.404 on behalf of Covered Entity where a breach of unsecured PHI was committed by Business Associate or its employee, officer, subcontractor or other agent of Business Associate or is within the unique knowledge of Business Associate as opposed to Covered Entity. In such case, Business Associate will prepare the notice and shall provide it to Covered Entity for review and approval at least five calendar days before it is required to be sent to the affected individual(s). Covered Entity shall promptly review the notice and shall not unreasonably withhold its approval.

(c) Further, where a breach involves more than 500 individuals and was committed by the Business Associate or its employee, officer, subcontractor or other agent or is within the unique knowledge of Business Associate as opposed to Covered Entity. Business Associate shall provide notice to the media pursuant to 45 CFR 164.406. Again, Business Associate will prepare the notice and shall provide it to Covered Entity for review and approval at least five calendar days before it is required to be sent to the media. Covered Entity shall promptly review the notice and shall not unreasonably withhold its approval.

(d) Business Associate shall maintain a log of breaches of unsecured PHI with respect to Covered Entity and shall submit the log to Covered Entity within 30 calendar days following the end of each calendar year so that the Plan may report breaches to the Secretary in accordance with 45 CFR 164.408. This requirement shall take effect with respect to breaches occurring on or after September 23, 2009.

2.6 Business Associate agrees to ensure that any agent, including the subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity, agrees in writing to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information. Moreover, Business Associate shall ensure that any such agent or subcontractor agrees to implement reasonable and appropriate safeguards to protect Covered Entity’s electronic PHI.
2.7 Business Associate agrees to provide reasonable access, at the written request of Covered Entity, to Protected Health Information in a Designated Record Set, to Covered Entity or, as directed in writing by Covered Entity, to an Individual in order to meet the requirements under 45 CFR 164.524.

2.8 Business Associate agrees to make any amendment(s) to Protected Health information in a Designated Record Set that the Covered Entity directs in writing or agrees to pursuant to 45 CFR 164.526 at the written request of Covered Entity or an Individual.

2.9 Following receipt of a written request by Covered Entity, Business Associate agrees to 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 Entity reasonably available to the Secretary for purposes of the Secretary determining Covered Entity’s compliance with the Privacy Rule.

2.10 Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528, or effective as of January 1, 2011 or such later effective date prescribed by regulations issued by the U.S. Department of Health and Human Services, an accounting of disclosures of Protected Health Insurance from an Electronic Health Record in accordance with the HITECH Amendment.

2.11 Following receipt of a written request by Covered Entity, Business Associate agrees to provide to Covered Entity or an Individual, information collected in accordance with Section 2.10 of this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528, or effective as of January 1, 2011 or such later effective date prescribed by regulations issued by the U.S. Department of Health and Human Services, an accounting of disclosures of Protected Health Insurance from an Electronic Health Record in accordance with the HITECH Amendment.

Article 3

Permitted Uses and Disclosures by Business Associate

3.1 Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information to perform functions, activities or services for, or on behalf of, Covered Entity as specified in the underlying service agreement between Plan Sponsor and Business Associate with respect to the Health Plan(s), provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity. If there is no underlying service agreement between Plan Sponsor and Business Associate with respect to the Health Plan(s), Business Associate may use or disclose Protected Health Information to perform functions, activities or services for, or on behalf of, Covered Entity for the purposes of payment, treatment or health care operations as those terms are defined in the Privacy Rule, provided that such use or disclosure would not
violate the Privacy Rule if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity.

3.2 Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.

3.3 Except as otherwise limited in this Agreement, Business Associate may disclose Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate, provided that disclosures are Required by Law, or Business Associate obtains reasonable assurances in writing from the person to whom the information is disclosed that it will remain confidential 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 the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

3.4 Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information to provide Data Aggregation services to Covered Entity as permitted by 45 CFR 164.504(e)(2)(i)(B).

3.5 Business Associate may use Protected Health Information to report violations of law to appropriate Federal and State Authorities, consistent with 45 CFR 164.502(j)(1).

Article 4

Obligations of Covered Entity

4.1 Covered Entity shall notify Business Associate of any limitation(s) in its notice of privacy practices of Covered Entity in accordance with 45 CFR 164.520, to the extent that such limitation may affect Business Associate’s use or disclosure of Protected Health Information.

4.2 Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by an Individual to use or disclose Protected Health Information, to the extent that such changes may affect Business Associate’s use or disclosure of Protected Health Information.

4.3 Covered Entity shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect Business Associate’s use or disclosure of Protected Health Information.
Article 5

Term and Termination

5.1 Term

The term of this Agreement shall terminate when all of the Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this Section.

5.2 Termination for Cause

Upon either party’s knowledge of a material breach of this Agreement by the other party (the “breaching party”), the first party shall either:

(a) Provide an opportunity for the breaching party to cure the breach or end the violation and terminate this Agreement if the breaching party does not cure the breach or end the violation within a reasonable time, as specified by the first party;

(b) Immediately terminate this Agreement if the breaching party has breached a material term of this Agreement and cure is not possible; or

(c) If neither termination nor cure are feasible, the first party shall report the violation to the Secretary.

5.3 Effect of Termination

(a) Except as provided in subparagraph (b) 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. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.

(b) In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Covered Entity written notification of the conditions that make return or destruction infeasible. Upon receipt of written notification that return or destruction of Protected Health Information is infeasible, Business Associate 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, for so long as Business Associate maintains such Protected Health Information, which shall be for a period of at least six years.
Article 6

Miscellaneous

6.1 Notice

Any notice or other written communication required or permitted to be given to the other party under this Agreement must be addressed to the attention of the other party in care of the contact person identified below. Written notice may be delivered by certified mail or overnight mail.

Business Associate:

RE Sutton & Associates, a division of Brown & Brown of Indiana, Inc.
Contact Person: Richard E. Sutton
67 E. Garner Road, Suite 400
Brownsburg, IN 46112

Covered Entity:

Health Plans of: Monroe County Community School Corporation
Contact Person: Dr. John T. Coopman
401 E. Miller Dr.
Bloomington, IN 47401

6.2 Regulatory References

A reference in this Agreement to a section in the Privacy Rule or Security Rule means the section as in effect or as amended.

6.3 Amendment

This Agreement may only be amended in a written document signed by an authorized representative of each party. The parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the privacy and security requirements of HIPAA. If the Business Associate refuses to sign such an amendment, this Agreement shall automatically terminate.

6.4 Survival

The respective rights and obligations of Business Associate under Section 5.3 of this Agreement shall survive the termination of this Agreement.

6.5 Interpretation

Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy Rule and the Security Rule.
6.6 **Successors**

This Agreement is binding on each party’s legal successors.

6.7 **Indemnification**

Business Associate agrees to indemnify and hold harmless Covered Entity, Plan Sponsor and its directors, officers and employees against any and all claims, lawsuits, settlements, judgments, costs, penalties and expenses including attorneys fees resulting from or arising out of or in connection with a use or disclosure of Protected Health Information by Business Associate or its subcontractors or agents in violation of this Agreement.

Covered Entity and Plan Sponsor agree to indemnify and hold harmless Business Associate and its directors, officers and employees against any and all claims, lawsuits, settlements, judgments, costs, penalties and expenses including attorneys fees resulting from or arising out of or in connection with a use or disclosure of Protected Health Information by Covered Entity or Plan Sponsor, or agents of Covered Entity or Plan Sponsor, in violation of this Agreement.

6.8 **No Beneficiaries**

Nothing expressed or implied in this Agreement is intended to confer, nor shall anything confer, upon any person other than the Covered Entity, Plan Sponsor and Business Associate, and their respective successors or assigns, any rights, remedies, obligations or liabilities.

RE Sutton & Associates,
a division of Brown & Brown of Indiana, Inc.
(Business Associate)

Dated: February 22, 2010

![Signature]

Its Privacy Officer

Health Plans of Monroe County Community School Corporation
(Covered Entity)

Dated: 

By

Its